127-117

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 223.

MORTON MARYE, SUCCESSOR TO S. BROWN ALLEN, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF VIRGINIA, APPELLANT,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

FILED APRIL 30, 1885.

junctively," and argues that he intended the jury to understand they might be taken *disjunctively*. No meaning can be assigned to the word "conjunctively," as used in the charge, unless it means that paper so assessed must be such as the buyer may put to either use, as his occasion may require. Manifestly, the jury must have so understood.

III.

We shall not extend or repeat our observations as to what constitutes "printing" or a "book;" but merely say that if our importation answers the description given in the statute, refinements as to the method of printing, or the purpose to be subserved thereby, ought not to increase the burden placed upon us by the law.

IV.

The Solicitor-General also ignores that portion of the charge which authorizes the jury (even if they do *not* find this paper to be excluded from the trade-meaning of "printing paper") to find for the defendant if *they* believe that this term, *not* used technically, was not intended by the law makers to cover such paper as we imported.

This left the jury to understand that, although the statutory use of language was "*not* technical," and though the paper *was* "printing paper" as known to the trade, yet a verdict could be found against us upon *the jury's* conclusion as to the law makers' intention.

EDWIN B. SMITH,
Of Counsel for Plaintiff.

127-117

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 223.

MORTON MARYE, SUCCESSOR TO S. BROWN ALLEN, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF VIRGINIA, APPELLANT,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

FILED APRIL 30, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 223.

MORTON MARYE, SUCCESSOR TO S. BROWN ALLEN, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF VIRGINIA, APPELLANT,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Exhibit W. R. S.—Report of W. R. Smith to auditor, June 23, 1883	31	12
Exhibit J. E. H.—Advertisement of sale	33	13
B. & O.—List of property levied on	35	14
Order for injunction	36	15
Injunction bond	38	15
Chancery subpœnas	41	17
Agreement marked "Danville"	43	19
Joint and several demurrers and answers	45	20
Letter of auditor to treasurer, June 23, 1883	59	25
Exhibit B^1—Order for injunction	60	25
B^2—Agreement of counsel	63	26
B^3— " "	65	27
B^4—Statement of tax imposed for 1883, &c.	66	28
X—Agreement of counsel	68	28
B^6—Statement as to rolling stock, &c.	74	31
W. M. C.—Affidavit of Wm. M. Clements	77	33

JUDD & DETWEILER, PRINTERS, WASHINGTON, MARCH 8, 1888.

	Original.	Print.
Order to file answers	82	35
Joint and several answers, &c.	82	35
Plaintiff's note of argument	94	40
Opinion	100	42
Decree	111	46
Clerk's certificate	113	47
Bond	114	47
Citation	115	48
Proof of service of citation	116	49

1 In the Circuit Court of the United States of America for the Western District of Virginia, at Harrisonburg. In Chancery.

THE BALTIMORE AND OHIO RAILROAD COMPANY
vs.
S. BROWN ALLEN, Auditor, and Others.

Upon an injunction.

Pleas before the judges of the circuit court of the United States of America for the western district of Virginia, at Harrisonburg, on the 30th day of August, 1884, Hon. Hugh L. Bond, judge of the fourth judicial circuit, and Hon. John Paul, judge of the district court of the United States for the western district of Virginia, presiding.

Be it remembered that heretofore, to wit, on the 6th day of July, 1883, in the clerk's office of the circuit court of the United States of America for the western district of Virginia, at Danville, Virginia, came the Baltimore and Ohio Railroad Company, by its counsel, and exhibited its bill of complaint against S. Brown Allen, auditor of public accounts of the State of Virginia; John Ed. Hamilton, treasurer of Augusta county, State of Virginia, and W. R. Smith, of Richmond, Virginia; which bill, together with the exhibits filed therewith, is in the words and figures here following, to wit:

2 To the honorable the judges of the circuit court of the United States for the western district of Virginia:

The Baltimore and Ohio Railroad Company, a corporation created by the State of Maryland and a citizen thereof, brings this its bill against S. Brown Allen, auditor of public accounts for the State of Virginia, residing in Richmond, in said State, and John Ed. Hamilton, treasurer of Augusta county, in the State of Virginia, residing in Augusta county, in said State of Virginia, and W. R. Smith, residing in Richmond, Va.

That your orator has, under what is termed a working contract, for many years been running and operating the lines of the Winchester and Potomac Railroad Company, of the Winchester and Strausburg Railroad Company, and what is designated in the assessment list hereinafter exhibited as the Strausburg and Harrisonburg Railroad Company, the line referred to being in fact that part of the old Manassas Gap railroad lying betwe-n the town of Strausburg, in the county of Shenandoah, and the town of Harrisonburg, in the county of Rockingham, in the State of Virginia, the said three lines of roads constituting one continuous line of railway from the boundary line of Virginia and West Virginia to the said town of Harrisonburg, in the State of Virginia, but are each separate and distinct railroad corporations chartered under the laws of Virginia, and are separate and distinct lines of railroad, so
3 far as the laws of Virginia are concerned and for all purposes thereunder, as well for the purposes of taxation *as well* as for all other purposes.

That on the 27 day of Nov., in the year 1867, your orator became the lessee of the Winchester and Potomac road aforesaid, a part of which lies in the State of Virginia and a part of which lies in the State of West Virginia, for the period of — years; and on the — day of ——, 18—, your orator began to operate the Winchester and Strausburg railroad aforesaid, leading from the town of Winchester to the town of Strausburg, Virginia, for the period of — years; and on the — day of ——, in the year of —, your orator began to operate that part of the old Manassas Gap railroad lying between the town of Strausburg, in the county of Shenandoah, and the town of Harrisonburg, in the county of Rockingham, Virginia, for the period of — years.

On the — day of April, 1874, the Valley railroad, lying between the town of Harrisonburg, in the county of Rockingham, and the city of Staunton, in the county of Augusta, a distance of 26 miles, was completed and at that time your orator became the lessee of said road for a period of — years. The last-named lease
4 terminated on the 1st day of May, 1876, after which time it was leased and operated by the Shenandoah Valley Railroad Company, a corporation created under the laws of Virginia, for the period of — years, after which time for a considerable period of time said Valley railroad remained idle and was not in operation at all.

And on the 1st day of Feb'y, 1877, by contract entered into between the said Baltimore and Ohio Railroad Company and said Valley Railroad Company, the Valley Railroad Company undertook to operate its own road in the manner and on the terms and conditions set forth in said contract and has continued to operate the same down to the present time, the said Valley railroad paying the certain agreed rates prescribed in said contract for the use of the rolling stock of your orator passing over said road.

Your orator respectfully showeth that on the 23d day of June, 1883, one S. Brown Allen, auditor of public accounts of the State of Virginia, addressed to John Ed. Hamilton, treasurer of Augusta county, the following communication:

COMMONWEALTH OF VIRGINIA,
OFFICE AUDITOR OF PUBLIC ACC'TS,
RICHMOND, *June* 23, '83.

John Ed. Hamilton, treasurer of Augusta Co.

5 DEAR SIR: Enclosed herein I send you an assessment of taxes, &c., due by the Baltimore and Ohio Railroad Company on its rolling stock, &c., operating the Winchester & Potomac, the Winchester & Strausburg, and Strausburg & Harrisonburg, and the Valley Railroad Companies for the years 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, & 1881, said taxes, &c., amounting to $22,249.25, and I hereby appoint you the treasurer to collect said taxes in the manner prescribed by law.

I am, very respectfully, your ob'd't serv't,

[O. G.] S. BROWN ALLEN,
Aud. Pub. Acc'ts."

Accompanying which letter was a paper, a copy of which is herewith filed, marked "W. R. S.," and prayed to be taken and read as part of this bill; and thereupon the said John Ed. Hamilton, without any notice to your orator, proceeded to levy upon and seize one locomotive engine and eleven passenger cars and eight stock cars, three gondolas, and two water-stock cars, the property of your orator, the same being at or near Staunton, in the county of Augusta, in the State of Virginia, and also proceeded to levy upon
6 and seize fifteen cars, known as box cars, the property of your orator, then being at or near Harrisonburg, in the county of Rockingham, Virginia, all of which property is now in the possession of and under the control of said John Ed. Hamilton, and your orator has thereby become deprived of the use of the engine and cars aforesaid in the transportation of freight and passengers and in the performance of its public duties and obligations as common carriers, and has thereby been greatly hindered and impeded in the exercise of its rights and franchises, to its irreparable damage and injury.

Your orator alleges that the seizure of its cars and engine as aforesaid by the said John Ed. Hamilton and the pretended assessment of the said William R. Smith and pretended authority given by said S. Brown Allen, auditor, in said letter to said Hamilton are all done in utter violation of law and are without precedent.

Your orator alleges that neither the said Baltimore and Ohio Railroad Company nor the said Valley Railroad Company nor the said Winchester & Potomac Railroad Company nor the said Winchester & Strausburg Railroad Company nor the said Ma-
7 nassas Gap Railroad Company, called the Strausburg and Harrisonburg Railroad Company, have ever made default in the payment of the taxes due from them or either of them to the State of Virginia or to the auditor or treasurer of said State for either of the years from 1870 down to 1881, inclusive; but, upon the contrary, the said railroad companies have annually, during the whole period within which they were assessed or liable to be assessed for taxes, paid *annually*, at the times and in the modes prescribed by law, into the treasury, at Richmond, Virginia, the annual assessments made upon their property in pursuance of the statutes of Virginia in such cases made and provided.

Your orator alleges that no part of the sum of $22,249.25, which is now claimed by the said John Ed. Hamilton under the instructions of the said S. Brown Allen, auditor of Virginia, and for which the said Hamilton has levied upon and seized the rolling stock and property of your orator, as aforesaid, is due or owing from the said Baltimore and Ohio Railroad Company or from either of the other railroad companies named in said paper "W. R. S."

8 Your orator further alleges that under the law of Virginia enacted in the year 1870 every railroad and canal company is required to report annually, on the first day of February, to the auditor of public accounts the estimated value of its real and personal property and the net earnings of the road or canal for the preceding twelve months, and the report is required to give the data on

which the same is made. Such report is required to be verified by the oath of the president or other proper officer of the company, and the company is made the collector for the State of the taxes which may from time to time be imposed, and is required, at the time fixed for making said report, to pay into the treasury the taxes imposed thereon by law.

A company failing to make such report or pay the taxes assessed might be immediately assessed under the direction of the then auditor of public accounts, by any person appointed by him for the purpose, at its full cost of construction, and a tax is directed to be at once levied on double such value at the annual rate levied upon the value of other property for the year. Such tax so levied is authorized to be collected by any sheriff or collector to whom the auditor may deliver the assessment or a copy thereof. This statute
9 is found in the Acts of the General Assembly of Virginia of 1870–'71, page- 93, '4, section 91, which is herein referred to as part of this bill. By the act of March 15th, 1872, Act- of 1871–'72, page 175, sect. 91, the same provision is substantially re-enacted, with some immaterial modifications. By the act of April 29th, 1874, page 353, section 1, Acts of 1874, the same provision is substantially re-enacted, except that the report is required to be made on or before the first day *day* of June of each year, and except that a company failing to make such report or to pay the taxes imposed thereon may be assessed, under the direction of the auditor of public accounts, by any person appointed by him for that purpose, rating their real estate and rolling stock at $12,000 per mile.

By the acts of 1875–'76, Session Acts, 1875–'76, page- 171, '72, section 20, the same provision is substantially re-enacted, except that the assessment made upon a company failing to make such reports is to be made by rating their real estate and rolling stock at $20,000 per mile. By the acts approved March 13th, 1877, Session Acts of 1876–'77, page 138, section 20, the same provision is substan-
10 tially re-enacted, with this addition, that upon the receipt of every such report required to be made by railroad or canal company to the auditor of public accounts of the estimated value of its personal and real property as of the 1st day of February of each year it shall be the duty of the auditor of public accounts to lay the same before the board of public works, who shall, after 30 days' notice previously given to the president, treasurer, or other proper officer of such company, proceed to ascertain and assess the value of the property so reported upon the best and most reliable information that can be procured, and to this end shall be authorized and empowered to send for persons and papers should it be deemed necessary. A certified copy of the assessment when made shall be immediately forwarded by the secretary of the board to the president or other proper officer of every railroad or canal company so assessed, whose duty it shall be to pay into the treasury of the State, within 60 days after the receipt thereof, the tax which may be imposed thereon by law.

Said last-named act has continued in force to the present time.

11 Your orator alleges that the said Baltimore and Ohio Railroad Company and the several railroad companies named in

said paper " W. R. S. have each and all complied fully and in every respect with the requirements of the said several acts aforesaid, so far as the same were applicable to them or either of them, but, notwithstanding this, the said S. Brown Allen, auditor, whose term of office commenced after the period at which all of the taxes for the years 1870 to the year 1881, inclusive, became due and payable and were paid as aforesaid, has, without authority of law and in utter violation of law, through the agency of the said John Ed. Hamilton, caused the property of your orator to be levied on and seized, as aforesaid, under a pretended claim for taxes as to which he, the *the* said S. Brown Allen, auditor, was and is *functus officio*, and with which he had no connection or right, and which claim is without foundation in law and in fact.

Your orator alleges that it is not a resident of Virginia, but a resident of the State of Maryland, having its principal office in the city of Baltimore, Maryland; that its rolling stock is used to operate its various lines of road & branches leading from Baltimore, Md., to Chicago, Illinois; that it has no rolling stock that has
12 any location or *situs* in the State of Virginia, but uses the same from time to time over its trunk line & branches as its business operations may from time to time require; that its rolling stock is not subject to assessment for taxes by the laws of Virginia, and that the auditors of Virginia and board of public works of said State have recognized this fact ever since your orator began to operate this aforesaid railroad.

Your orator further alleges that the rolling stock levied on and seized by the said Jno. Ed. Hamilton, as aforesaid, is absolutely essential to the proper use and enjoyment of its franchises & rights in the transportation of the large amount of freight and the large number of passengers which are daily transported over its trunk line & branches and for the performance of its duties to the public as a common public carrier, and that to deprive your orator of the daily use of said cars & engines will not only inflict upon your orator an injury and damage which is irreparable and which cannot be computed in dollars and cents, but will also prevent it from performing its duties to the public as such carrier and from the proper exercise of its rights and franchises as a public corporation
13 charged with a public duty.

Your orator alleges that it has already made contracts and undertaken to fulfill duties which it cannot perform without the use of said cars and engines; that it is not practicable to obtain other cars and engines to take the place of those seized by the defendant, Hamilton, until after the lapse of perhaps many months; and your orator alleges that the contracts and duties undertaken by it as aforesaid were undertaken by it in utter ignorance of the pretended or alleged claim sought to be enforced against it as aforesaid.

Your orator alleges that the action of the said S. Brown Allen, auditor, and W. R. Smith and John Ed. Hamilton is a fraud upon your orator; that no notice was ever given to your orator of any such claim or pretended claim against your orator or its property;

that no notice was ever given to any of the companies mentioned in said paper "W. R. S." of any such pretended or alleged claim; that no opportunity was afforded your orator of explaining or of combatting or of enquiring into said alleged or pretended claim for taxes; that no legal steps were taken to ascertain in any
14 manner or form the amount of rolling stock used by your orator on said roads or the value of such rolling stock; that the paper "W. R. S.," which seems to be the foundation of the whole pretended claim and under which the said Jno. Ed. Hamilton claims to be acting, shows upon its face that the quantity of rolling stock is not set forth, and that the whole proceeding is an usurpation of authority, unauthorized by law, fraudulent in fact, and utterly subversive of every right of your orator.

To show the entire fraudulent character of the alleged assessment alleged to have been made by William R. Smith, appointed by said auditor, S. Brown Allen, it is only necessary to state that said Smith took no steps whatever to ascertain the number or character of the freight or passenger cars, or the freight or passenger engines, or other rolling stock that was used upon the line of the railroads aforesaid, and the pretended assessment aforesaid, as will appear from its face, does not purport to give the number, character, or description of the cars, engines, or other rolling stock, and does not state what the rolling stock is which purports to have been
15 assessed as aforesaid. Said pretended assessment was made without even the slightest attempt to ascertain a single fact about the character or amount of the rolling stock used upon the roads aforesaid, and as further evidence of the fraudulent character of said pretended assessment your orator charges that said William R. Smith has pretended to assess the Baltimore and Ohio Railroad Company for stock used upon the Valley railroad prior to the date of the construction of that road and during years when no rolling stock was used upon the same, as is hereinafter more particularly set forth, and said pretended assessment of rolling stock is larger in amount for each year, from the year 1875 to 1881, inclusive, than the assessment made by the properly authorized officers upon the rolling stock of such a railroad as that of the Virginia Midland Railway Company, extending clear through the State of Virginia, running from Alexandria to Danville, with branch lines to Strausburg and other points, although said Virginia Midland Railway Company undoubtly uses and owns several times as much rolling stock on its lines as are used or necessary to be used upon the roads hereinbefore mentioned.

16 To further illustrate the fraudulent character of the pretended assessment, your orator avers that the Virginia Midland Railway Company has a rolling stock, consisting of engines, passenger, freight, and other cars, equal to about ten times the amount which would be required to be used by your orator for working the roads aforesaid, including the line of road lying in the State of West Virginia between the boundary line of Virginia and Harper's Ferry. For the year 1882, as your orator is informed, the year of the highest assessment of railroad property in the State

of Virginia, the assessment upon the Virginia Midland railway for rolling stock is four hundred and ninety-eight thousand four hundred and fifty dollars, as the same appears in the published compiled statement made by S. Brown Allen, auditor of public accounts, one of the defendants in this case, which sum is less than the amount of the pretended assessment made by William R. Smith against your orator for rolling stock used upon the railroads aforesaid, although such rolling stock is no more than about one-tenth of the
17 rolling stock used upon the Virginia Midland railway, the amount of which will appear from an examination of the Fifth Annual Report of the Railroad Commissioners of the State of Virginia, page 265.

Your orator avers and charges that an examination of the assessments of the rolling stock of any of the railroad companies owning railroads in Virginia made by the board of public works will show substantially the same state of facts when a comparison is made between the assessment of the rolling stock of such roads and the pretended assessment made by said William R. Smith under the direction of S. Brown Allen, the auditor aforesaid.

Your orator simply cites this by way of illustration of the entirely fraudulent character of said pretended assessment, aver-ing again that not the slightest effort has been made by any of the known modes of ascertaining information on such subjects to obtain information as to the amount, character, or value of rolling stock used by your orator upon the roads aforesaid, as hereinafter more specifically set forth.

Your orator charges that none of its rolling stock has any
18 fixed *situs* in the State of Virginia. Cars which run over said roads pass in and out of the State and over many railroads, and sometimes cars which pass over the road may not return to the road in Virginia during the entire year.

There is none of your orator's rolling stock that is kept in Virginia constantly, but, upon the contrary, said cars are simply run over the Valley railroad and the other railroads aforesaid and on other portions of your orator's lines in the States of West Virginia and Maryland and over the various railroads in the Western States.

The cars which are used on the line of railroads hereinbefore mentioned are ofttimes not even the cars of your orator, but are the cars of other and connecting lines of railroads, such as the Chesapeake and Ohio and other railroads which, when loaded, are sent over the railroads aforesaid to their destination upon the lines of your orator.

Your orator therefore distinctly avers that it has no rolling stock whatever which is liable to taxation in the State of Virginia any more than it is liable to taxation in any of the States through
19 which such rolling stock may happen to pass during the fiscal year, and the cars of your orator pass through almost all the States of the Union east of the Mississippi river and many of the States west thereof.

Your orator alleges that said pretended assessment includes taxes for — years antecedent to the time when your orator first began to operate the Strausburg & Harrisonburg railroad; includes taxes for

— years antecedent to the time when your orator began to operate the Winchester & Strausburg railroad; includes taxes for — years antecedent to the time the Valley railroad was completed; includes taxes for the period during which the Valley railroad was leased and operated by the Shenandoah Valley Railroad Company, and for the period during which the Valley railroad has been operated by the Valley Railroad Company itself; for a period during which there was no rolling stock on the line between Winchester and Staunton, and when, even if there had been, there could be no possible pretense of claim of liability on the part of your orator for taxes thereon.

That no notice whatever was given to your orator of any claim against your orator for the sums alleged to be due for taxes aforesaid, and no demand was made of your orator for the payment thereof until the levy aforesaid was made, and hence no opportunity was given to your orator to eliminate from the assessment the part thereof which applies to the rolling stock alleged to have been used in operating the Valley railroad anterior to the existence of said road or the part thereof which applies to the rolling stock alleged to have been used on the Winchester & Strausburg railroad and the Strausburg & Harrisonburg railroad anterior to the time when your orator began to operate those roads; and now, in order to relieve your orator's property from distress and to prevent the sale thereof, which said Jno. Ed. Hamilton, treasurer, &c., proposes to make immediately hereafter, as hereafter stated, your orator is required to pay large sums for taxes which, even upon the theory upon which the said auditor has proceeded to make said assessments, are clearly not due.

Your orator alleges that if the whole or any part of said pretended claim of $22,249.25 was justly due or owing from said several railroad companies or either of them or was a just or legal demand against your orator or your orator's property the only remedy known to the law for enforcing such demand was and is by suit or action in court, and the unwarranted and unauthorized action of the said S. Brown Allen, W. R. Smith, and John Ed. Hamilton is a fraud and outrage upon your orator's rights, for which no adequate remedy exists, save & except in a court of equity by injunction.

Your orator alleges that if said property is permitted to be sold it will compel your orator not only to suffer an irreparable loss and injury and operate a gross fraud upon its rights & privileges, but that it will tend to compel a multiplicity of suits either against the several parties who may become purchasers of said property or against the parties engaged in the perpetration of this great wrong and injury to the rights of your orator.

Your orator further alleges that the said Jno. E. Hamilton has proceeded to advertise the said cars & engine to be sold on the 9th & 10th days of July, 1883, as will more fully appear by reference to a copy of said advertisement herewith filed, marked "J. E. H.," and prayed to be taken and read as a part of this bill, and that, unless restrained by the process of this court, he will proceed to sell the same at the time specified.

Your orator further alleges that prior to 1877 the said several railroads hereinbefore mentioned made to the auditor of public accounts, in the manner required by law, the reports which were required of them, and upon those reports they were duly assessed with taxes on all their property liable to assessment in Virginia, and then proceeded to pay, in the mode prescribed by law, into the treasury of Virginia the taxes so assessed, and ever since the passage of the act of March 13th, 1877, hereinbefore referred to, they have made the reports required by that act, and said reports have been annually laid before the board of public works, who, after the notice and in the manner prescribed by said act, have annually proceeded to ascertain and assess the value of the property upon the best & most reliable information, and said assessments so made have been annually forwarded to the president or other proper officer of such company, who has annually paid into
23 the treasury of the State, within sixty days after the receipt thereof, the taxes so assessed, in the mode prescribed by law, and neither the board of public works nor the said auditor nor any other person had any power or authority after such assessment & payment to impose any other or additional tax or make any other assessment upon the properties of said railroad companies or either of them, but said board of public works were thenceforward & ever thereafter *functus officio* as to such assessment & payment, and neither they nor their successors in office have any power under the laws of Virginia to take such action or institute such proceeding as has been undertaken by said S. Brown Allen, W. R. Smith, & Jno. E. Hamilton.

Your orator alleges that the damage and injury which will result from the seizure and sale of its property cannot be accurately computed or, if it could, an action against the said John Ed. Hamilton would not avail to repair the injury, even if that injury were confined to the actual value of the property seized and advertised to be sold.

24 Your orator believes and charges that the said John Ed. Hamilton has not sufficient property or estate to respond in damages to an amount equal to one-half of the property levied on or to an amount equal to one-half the said claim of $22,249.25, and that his estate would be wholly insufficient to respond to the real damage and injury which your orator will sustain if said property is sold.

Your orator avers that no damages can compensate it for the injury which will be sustained if said property is permitted to be sold.

Your orator herewith files a copy of the schedule of the property levied on by said John Ed. Hamilton, marked Exhibit "B. & O."

Your orator is advised that the said action of the said S. Brown Allen, auditor, &c., W. R. Smith, and John Ed. Hamilton, treasurer, &c., in undertaking to make said assessment against your orator as above stated and in levying upon your orator's property as above stated is wholly unauthorized, illegal, null, and void for the following reasons:

1st. Because the several statutes under which they are pre-
25 tending to proceed and under which alone any pretense of such authority can be claimed nowhere authorize, even upon default in making the reports required or in paying the taxes assessed upon the basis of such report, an assessment upon the rolling stock of a railroad company apart and separate from its real estate.

2d. That the assessments provided for in said several statutes can, under authority thereof, only be made against a railroad company upon its default, either in making the report required or in paying the taxes due as ascertained upon the basis of said report, and neither your orator nor either of the several railroads of which your orator is operating has ever made default, either in making the report required in said several statutes or paying the taxes due as ascertained on the basis thereof.

3d. Because the only person authorized by said statutes to proceed to cause assessments to be made upon default committed is the auditor in office at the time of default committed. If such default were made in February, 1870, as to authorize an assessment against the railroad committing such default the only person authorized to make such assessment was the auditor of public accounts
26 then in office, said act specially directing the assessment to be made immediatly upon default. The said S. Brown Allen, not being the auditor of public accounts of Virginia until since the expiration of the last year named in said assessment, to wit, since 1881, has no authority to proceed to make such assessment for defaults committed anterior to the commencement of his term of office.

4th. Because the several statutes assessing railroad property for taxes apply and apply only to railroads located or partly located in the State of Virginia. Under said statutes no report is required or can be required of railroads not located wholly or in part in the State of Virginia. Your orator, as the Baltimore & Ohio Railroad Company, is not required by said statutes to make any report, and cannot be assessed for taxes under their authority.

5th. Because the said John Ed. Hamilton is not a sheriff or collector, and his action in levying and seizing on said property is the act of an individual without authority of law, even if the assessment were properly made, the statute requiring this duty to be performed by a sheriff or collector.

27 Your orator further alleges that it is not in possession of the Valley railroad, and is not the tenant of the Valley railroad, and that its property is not in any manner liable for the taxes of the Valley Railroad Company under the law of Virginia.

Your orator is without remedy, save in a court of equity, to prevent the gross fraud sought to be perpetrated, or to prevent the irreparable damage and injury threatened to its business, or to prevent the multiplicity of suits hereinbefore mentioned, or to set aside and vacate the unlawful assessment or pretended assessment made by said S. Brown Allen, auditor, and William R. Smith, or to prevent the unlawful and unauthorized levy, seizure, and sale of its

property contemplated by said John Ed. Hamilton, or to prevent the *the* utter sacrifice of said property so seized as aforesaid, and, being so remediless, prays that the said S. Brown Allen, John Ed. Hamilton, and W. R. Smith may be made parties defendant to this bill and required to answer the same on oath; that proper process may issue, and that an injunction may be awarded to restrain and inhibit the said S. Brown Allen, John Ed. Hamilton, and William R. Smith, their servants, agents, and attorneys and all
28 other persons, from all further proceeding for or towards the collection of the taxes or alleged taxes mentioned in said paper "W. R. S." or set forth in this bill, and from all proceedings towards levying upon, seizing, selling, or offering to sell or in any manner interfering with the property of your orator hereinbefore mentioned.

That a preliminary restraining order and injunction may be issued without delay restraining the respondents, their agents and servants or any of them, from all further proceedings towards levying upon, seizing, selling, or offering to sell or in any manner interfering with the property of your orator hereinbefore mentioned or from seizing any other property of your orator under and by virtue of said alleged assessment.

That the said pretended assessment may be set aside, vacated, and annul-ed, and that your orator's rights and interests may be fully protected, and that it may have such other, further, and general relief as the nature of the case — require — to equity may seem meet and right; and to that end may it please the court also to grant unto your orator a writ of subpœna to be issued out of and under
29 the seal of this honorable court to the said S. Brown Allen, auditor of public accounts, William R. Smith, and John Ed. Hamilton, treasurer, &c., of the State of Virginia, commanding them and each of them, at a day and under penalty therein to be inserted, personally to be and appear before this honorable court and then and there to answer premises and stand and abide by and perform such order, direction, and decree as shall be made therein.

(Signed) THE BALTIMORE AND OHIO RAILROAD COMPANY,
By JOHN W. DAVIS,
Assistant to Vice-President.

JOHN K. COWEN,
SHEFFEY & BUMGARDNER,
Of Counsel for Plaintiff, W. B. Compton.

STATE OF MARYLAND, *City of Baltimore,* } *To wit:*

I hereby certify that John W. Davis, assistant to vice-president of the Baltimore and Ohio Railroad Company, personally appeared before me, Philip H. Hoffman, commissioner for Virginia in Maryland, residing in Baltimore city, duly commissioned and qualified, and, for and on behalf of said complainant, made oath in due form

of law that he has read the same and that the allegations
30 therein made are true, to the best of his knowledge and belief, and that the statements therein made of his own knowledge are true, and those made upon information of others he believes to be true, and at the same time subscribed the same.

(Signed) JOHN W. DAVIS.

In testimony whereof I have hereunto set my hand and official seal on the date above written—this 30th June, 1883.

{ Seal Ph. H. Hoffman, Commissioner of Deeds, Baltimore, Maryland. }

(Signed) PH. H. HOFFMAN,
Commissioner for Virginia in Maryland,
Residing in Baltimore City.

31. And on the same day, to wit, on the 6th day of July, 1883, the following report of Wm. R. Smith to S. Brown Allen, auditor, is filed with the foregoing bill and endorsed Exhibit "W. R. S.," which is in the words and figures here following, to wit:

COMMONWEALTH OF VIRGINIA,
OFFICE AUDITOR OF PUBLIC ACC'TS,
RICHMOND, *June* 23, '83.

Report of William R. Smith, who was appointed by the auditor of public accounts of the State of Virginia for the purpose, pursuant to law, of the taxes assessed against the Baltimore and Ohio Railroad Company and of the penalties imposed by law for the failure of said company to make reports and pay the taxes, as required by law, of and upon the value of the rolling stock, including passenger, freight, cattle, stock, baggage, mail, express, sleeping, palace, parlor, and all other cars, machinery, and equipment owned or belonging to said Baltimore & Ohio Railroad Company, operating the Winchester & Potomac railroad, the Winchester and Strausburg
32 railroad, the Strausburg and Harrisonburg railroad, and the Valley railroad for the years 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, & 1881:

Penalties.

Years.	Value of rolling stock, &c.	Tax.
1870	$150,000 00	$750 00
1871	150,000 00	750 00
1872	150,000 00	750 00
1873	150,000 00	750 00
1874	150,000 00	750 00
1875	528,550 00	2,642 75
1876	528,550 00	2,642 75
1877	528,550 00	2,642 75
1878	528,550 00	2,642 75
1879	528,550 00	2,642 75
1880	528,550 00	2,642 75
1881	528,550 00	2,642 75
	$4,449,850 00	$22,249 25

Attest: (Signed) WM. R. SMITH.

To S. Brown Allen, auditor of public acc'ts.

33 The following advertisements are pasted on the back of Exhibit "B. & O.," and are marked "J. E. H.," which are in the words and figures here following, to wit:

Auction Sale.

By virtue of authority vested in me by S. Brown Allen, auditor of public accounts, who has appointed me for the purpose, I will proceed, on Monday, July the 9th, 1883, in front of the court-house, in the city of Staunton, State of Virginia, at the hour of 11 o'clock a. m., to sell at public auction to the highest bidder the following-named property found on the track of the Valley Railroad Company and belonging to the B. & O. R. R. Co., to wit:

Engine No. 362; passenger cars Nos. 252, 271, 273, 272; box cars Nos. 13433, 1360, 11660, 11610, 9978, 12369, 10616; stock cars Nos. 6897, 6029, 7632, 6283, 7510, 6900, 6510, 7611; gondolas Nos. 3321, 2175, 2824; water stock Nos. 19710, 19763, which property has been distrained by me to pay the taxes assessed on the rolling stock, &c., of the B. & O. R. R. Co., operating the Winchester & Potomac, the Winchester & Strausburg, the Strausburg & Harrisonburg, and the Valley Railroad Companies, for the years 1870 to 1881, inclusive, by said auditor of public accounts, as in the mode prescribed by law.

JOHN E. HAMILTON,
Special Collector.

June 28, tds

Auction Sale.

By virtue of authority vested in me by S. Brown Allen, auditor of public accounts, who has appointed me for the purpose,
34 I will proceed, on Tuesday, July the 10th, 1883, in front of the court-house, in the town of Harrisonburg, State of Virginia, at the hour of 11 o'clock a. m., to sell at public auction to the highest bidder the following-named property found on the track of the Valley Railroad Company and belonging to the B. & O. R. R. Co., to wit:

Box cars Nos. 9641, 13114, 9084, 9203, 12051, 1299, 15158, 28145; stock cars Nos. 6870, 7582, 6642; gondolas Nos. 5690, 5595, 5985, 5767, which property has been distrained by me to pay the taxes assessed on the rolling stock, &c., of the B. & O. R. R. Co., operating the Winchester & Potomac, the Winchester & Strausburg, the Strausburg & Harrisonburg, and the Valley Railroad Companies, for the years 1870 to 1881, inclusive, by said auditor of public accounts, as in the mode prescribed by law.

(Signed) JOHN E. HAMILTON,
Special Collector.

June 28, tds.

35 And on the same day, to wit, on the 6th day of July, 1883, the following list of property levied on by John Ed. Hamilton, treasurer of Augusta county, for taxes against the B. & O. R. R. from 1870 to 1881, and marked Exhibit "B. & O," is filed with the foregoing bill, which is in the words and figures here following, to wit:

Copy.

List of Cars Levied on by John Ed. Hamilton, Treasurer of Augusta Co., on B. & O. R. R. to Satisfy the Back Taxes from 1870 *to* 1881, *Inclusive:*

Staunton.		Harrisonburg.	
Engine No.	362	Box,	9641
Passenger,	252	"	13114
"	271	"	9084
"	273	"	9203
"	272	"	12051
"	13433	"	1299
"	1360	"	15158
"	11660	"	28145
"	11610	"	6870
"	9978	"	7582
"	12369	"	6642
"	10616	"	5690
Stock,	6897	"	5595
"	6029	"	5985
"	7632	"	5767
"	6283		
"	7540		

Stock,	6900
"	6510
"	7611
Gondolas,	3321
"	2175
"	2824
Water stock,	19710
"	19763

36 The following order for an injunction is filed in this cause:

In the Circuit Court of the United States for the Western District of Virginia.

THE BALTIMORE AND OHIO RAILROAD COMPANY
vs.
S. BROWN ALLEN, JOHN ED. HAMILTON, and WILLIAM R. SMITH.

This cause coming on to be heard in vacation, this 2nd day of July, in the year 1883, upon the bill of the plaintiff and the exhibits therewith filed, and upon motion of the plaintiff for the preliminary injunction hereinafter awarded, the court being of opinion that upon the facts stated in the bill the plaintiff is entitled to the preliminary injunction as prayed for in the bill, it is therefore adjudged, ordered, and decreed that the preliminary injunction prayed for in the bill be awarded, and that the said defendants, especially the said John Ed. Hamilton, treasurer of Augusta county, be enjoined and restrained from all further proceeding to levy upon, seize, and sell the property of the plaintiff mentioned in said bill or any other property of the said plaintiff until the further order of this court.

It is further adjudged, ordered, and decreed that this cause be set for hearing at the next term of the circuit court of the United
37 States for the western district of Virginia, to be holden at Danville, in said State, on August 28, 1883; and it is further ordered and decreed that said defendants have leave to move to dissolve the preliminary order of injunction hereby awarded at any time upon giving the plaintiff or his counsel ten days' notice of their purpose so to do, and upon their filing a similar bond, conditioned and approved as complainant's bond, hereinafter described. This injunction shall not take effect until the plaintiff or some one for it shall give bond in the penalty of two thousand dollars, with good security, conditioned according to law, which bond shall be approved by a judge of this court and shall be filed with the clerk of the circuit court of the United States for said western district of Virginia, at Danville.

(Signed) HUGH L. BOND,
C'r. Judge.

38 The following bond is filed in this cause:

Know all men by these presents that we, the Baltimore and Ohio Railroad Company, acting by and through its treasurer, William H. Ijams, as principal, and T. Harrison Garrett and George P.

Frick, as sureties, are held and firmly bound unto S. Brown Allen, John Ed. Hamilton, and William R. Smith in the full and just sum of two thousand dollars, current money, to be paid to the said S. Brown Allen, John Ed. Hamilton, and William R. Smith or to their certain attorneys; to the payment of which sum, well and truly to be made and done, we bind ourselves and each of us, and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this second day of July, in year one thousand eight hundred and eighty-three.

Whereas by an order of the circuit court of the United States for the western district of Virginia, passed in a cause wherein the said Baltimore and Ohio Railroad Company is complainant and the said S. Brown Allen, John Ed. Hamilton, and William R. Smith are defendants, an injunction is about to issue to restrain said de-
39 fendants from all further proceedings to levy upon, seize, and sell the property of the said Baltimore and Ohio Railroad Company mentioned in the bill of complaint of said complainant filed in said cause or any other property of the said complainants, as prayed for in the bill filed in said cause, until the further order of said court, said injunction to issue only upon said complainant filing a bond with security in the above penalty of two thousand dollars:

Now, the condition of the above obligation is such that if the said complainant shall prosecute the said writ of injunction with effect and satisfy and save harmless said defendants if the same be not prosecuted with effect and in such case pay all costs and damages that may be occasioned by the issuing thereof and shall in all things obey, abide by, perform, and fulfill such decree and order as shall be made in the premises, then the above obligation to be void; otherwise of full force and virtue.

[SEAL.] THE BALTIMORE AND OHIO RAILROAD COMPANY,
40 By W. H. IJAMS, *Its Treasurer.*

Attest: W. H. IJAMS, *Secretary.*

Signed, sealed, and delivered in the presence of—
T. HARRISON GARRETT.
GEO. P. FRICK.

The following endorsement appears on the back of this bond:

Mr. CLERK: This bond is approved, & please file it.
HUGH L. BOND,
C'r. Judge.

41 *Chancery Subpœna.*

UNITED STATES OF AMERICA,
Western District of Virginia, } *ss:*

The President of the United States of America to S. Brown Allen, auditor of public accounts of the State of Virginia, William R. Smith, and John Ed. Hamilton, treasurer of Augusta county, in the State of Virginia, Greeting:

We command you and every one of you that you appear before our judges of our circuit court of the United States of America for the western district of Virginia, at the court-room, in the town of Danville, in said district, on the 28th of August, 1883, next, to answer the bill of complaint & injunction of the Baltimore & Ohio Railroad Company, a corporation created by the State of Maryland and a citizen thereof, this day filed in the clerk's office of said court, in said town of Danville, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the western district of Virginia to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Danville, this 6th day of July, in the year of our Lord one thousand eight hundred and 83, and of our Independence the 108 year.

(Signed) G. W. MORRIS, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Danville aforesaid, on or before the day to which the above writ is returnable the complaint will be taken against them as confessed and a decree entered accordingly.

[SEAL.] (Signed) G. W. MORRIS, *Clerk.*

(See on back of this subpœna for endorsement, &c.)

41½ MEMO.—Complainants pray that the defendants be enjoined, restrained, and inhibited, their servants, agents, and attorneys and all other persons, from further proceedings for or towards the collection of the taxes or alleged taxes mentioned in the paper "W. R. S." referred to in the within-mentioned bill of complaint or set forth in said bill, and from all proceedings towards levying upon, seizing, selling, or offering for sale or in any manner interfering with the property of the plaintiffs within under & by virtue of the within assessment described in said bill until the further order of the court, bond and security having been given and filed as required by the order granting the within injunction.

Teste: (Signed) G. W. MORRIS, *Clerk.*

STATE OF VIRGINIA,
Augusta County, } *To wit:*

I, Lewis M. Bumgardner, a notary public for the county of Augusta, in the State of Virginia, do hereby certify that Wm. G. Kin-

ney this day personally appeared before me, in my county aforesaid, and made oath that he this day executed the annexed chancery subpœna in case of the Balto. & Ohio R. R. Co. *vs.* S. Brown Allen, aud'r, &c., by delivering a true copy thereof to John Ed. Hamilton in person.

Witness my hand and notarial seal this 7th day of July, 1883.

[SEAL.] LEWIS M. BUMGARDNER,
Notary Public.

42 *Chancery Subpœna.*

UNITED STATES OF AMERICA, *Western District of Virginia,* } *ss:*

The President of the United States of America to S. Brown Allen, auditor of public accounts of the State of Virginia, William R. Smith, and John Ed. Hamilton, treasurer of Augusta county, in the State of Virginia, Greeting:

We command you and every one of you that you appear before our judges of our circuit court of the United States of America for the western district of Virginia, at the court-room, in the town of Danville, in said district, on the 28th of August, 1883, next, to answer the bill of complaint & injunction of the Baltimore & Ohio Railroad Company, a corporation created by the State of Maryland and a citizen thereof, this day filed in the clerk's office of said court, in said town of Danville, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the eastern district of Virginia to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Danville, this 6th day of July, in the year of our Lord one thousand eight hundred and 83, and of our Independence the 108 year.

(Signed) G. W. MORRIS, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Danville aforesaid, on or before the day to which the above writ is returnable the complaint will be taken against them as confessed and a decree entered accordingly.

[SEAL.] (Signed) G. W. MORRIS, *Clerk.*

(See on back of this subpœna for endorsement, &c.)

42½ MEMO.—Complainants pray that the defendants be enjoined, restrained, and inhibited, their servants, agents, and attorneys and all other persons from further proceedings for or towards the collection of the taxes or alleged taxes mentioned in the paper, "W. R. S." referred to in the within-mentioned bill of complaint or set forth in said bill, & from all proceedings towards levying upon, seizing, selling, or offering for sale or in any other manner interfering with the property of the plaintiffs within set forth, or from seiz-

ing any other property of the plaintiffs within under & by virtue of the alleged assessment described in said bill until the further order of the court, bond & security having been given and filed as required by the order granting the within injunction.

Teste: (Signed) G. W. MORRIS, *Clerk.*

Executed this 20th day of July, 1883, by delivering to S. Brown Allen & W. Smith, the within-named defendants, in person a true copy of this writ.

(Signed) THOS. E. BALLARD,
Special Deputy Marshal.

43 The following agreement of counsel is filed in this cause and is marked "Danville:"

Agreement of Counsel, Marked "Danville."

The complainant in this case having made return and report to the board of public works of its rolling stock used and employed in operating the Valley Division of its lines and the valuation thereof for the year 1883, it is agreed that, if upon the pleadings and proofs, including a copy of the said complainant's report aforesaid, the court shall be of opinion that the complainant is liable to pay taxes on its rolling stock so used and employed for the ten years named in the report of W. R. Smith, that such liability shall be ascertained and fixed upon the basis of the complainant's report aforesaid to the board of public works for the year 1883; and the defendants desiring to file an answer to said bill, it is agreed that they may do so, and that so much of the joint and several answer of S. B. Allen & others in the case of the same complainant *vs.* S. B. Allen, auditor, &c., pending in the United States court, at Harrisonburg (involving chiefly the matter of the tender of coupons in payment of
44 taxes, but also other matters claimed by the defendants to be similar to the questions in this cause), as shall be pertinent to the controversy in this cause, and at an early day, after January 1, 1884, the parties, by their counsel, will argue the questions involved before the court, and will have it disposed of upon the hearing; and it is further agreed that paper styled "Agreement of parties by counsel, marked X," to be filed in the Harrisonburg case may be used as far as applicable and be filed as evidence in said Danville case, and such other evidence as either party may deem necessary upon full examination of the questions involved.

December 20, '83.

(Signed) HUGH W. SHEFFEY,
For B. & O. Co.

" F. S. BLAIR,
Att'y Gen., for Def'ts.

45 And on another day, to wit, on the 22nd day of Dec'r, 1883, in the clerk's office of the circuit court of the United States for the western district of Virginia, at Danville, came the defendants, by

their attorney, and filed their joint and several demurrers and answers to the bill of the complainant, which is in the words and figures here following, to wit:

The joint and several demurrers and answers of S. Brown Allen, auditor of public accounts of Virginia, David R. Revely, treasurer of said State, and John E. Hamilton, treasurer of Augusta county, Virginia, to a bill for injunction exhibited in your honorable court against them by the Baltimore and Ohio Railroad Company.

To the Honorables Hugh L. Bond and R. W. Hughes, judges:

1st. By way of demurrer to said bill respondents come and say that the said bill is insufficient in law for the relief prayed for therein.

2d. But without in any way waiving the many errors, irregularities, and imperfections in said bill, but insisting thereon, by way of answer thereto, or so much thereof as they are advised it is material for them to answer, answering, they say that they enter their general traverse and denial of all the allegations of said bill, except in so far as they may be hereinafter admitted.

46

Respondents admit that the Baltimore and Ohio Railroad Company is a corporation created by the State of Maryland, as to its main trunk, and that it is a citizen of said State; that S. Brown Allen is the auditor of public accounts of the State of Virginia, D. R. Revely is the treasurer thereof, and John Ed. Hamilton is the treasurer of Augusta county, in said State; that the Winchester and Potomac, Winchester and Strausburg, and Strausburg and Harrisonburg Railroad Companies are now and have been for some years past run and operated by the Baltimore and Ohio railroad, the complainants in said bill.

And now, having admitted the foregoing matters, respondents again interpose their general and specific traverse and denial of all the other averments and allegations of facts and the inferences of law contained in said bill and call on the complainant for strict proof thereof.

The facts of this case are these: The Baltimore and Ohio Railroad Company have for some years past owned and operated, as a part of its line, the following branch roads: 1, the Winchester and Potomac road; 2, the Winchester and Strausburg road; 3, the Strausburg and Harrisonburg road, and, 4, the Valley road, giving it a continuous line from its main stem from Winchester to Staun-

47

ton by the branch lines just named, and which said four branch lines are wholly in the State of Virginia. They were incorporated by Virginia laws, organized as bodies politic in Virginia, and are subject to the ordinary tax laws of this State.

The said companies are so entirely under one management that the annual report for each of them to the auditor, required by act of April 22, 1881, — '82, sections 20 and 21, are made out by W. H. Ijams, the treasurer of the Baltimore and Ohio railroad, and all of the said annual reports are sworn to by the said treasurer, as will be seen from copies of the said railroad company's reports, herewith

filed, marked "Extract A," which are asked to be taken and considered as a part of this answer, as also the other exhibits hereinafter named.

The complainants, The Baltimore and Ohio railroad, have been operating these roads for — years past, but reporting no rolling stock along with the operations, names of their officers, and genera financial statement, and, as before stated, these reports were made and verified by the said treasurer of the Baltimore and Ohio railroad.

Respondents further say that such is the corporate identity of these companies and such the ownership, management, and control of the said four companies by the Baltimore and Ohio Rail-
48 road Company that the officers of the one are the officers of the other in many instances; that Samuel Spencer, the third vice-president of the Baltimore and Ohio railroad, is the president of the Valley railroad, as also a director thereof, elected as late as November 10, 1881; that W. H. Ijams is the treasurer and acting secretary of the Baltimore and Ohio road, and at the same time the treasurer and acting secretary of the Valley railroad; that James W. Davis is the assistant to the first vice-president of the Baltimore and Ohio railroad, and at the same time is road-master of the Valley roilroad, and the Baltimore and Ohio Railroad Company have as complete control, by some form of contract or arrangement (which is wholly immaterial to the purposes of this case), of the said Winchester and Potomac, Winchester and Strausburg, Strausburg and Harrisonburg, and the Valley railroads as any landlord or owner of property could possibly have over lands or personals committed to the care of managers or operatives; that for some years past the Baltimore and Ohio railroad has been recognized and treated as the parties responsible to the State of Virginia, and in other ways have recognized their liability and held themselves out to the world and to the State as liable for said railroads; therefore respondents
49 say that the Baltimore and Ohio Company are estopped now to deny their liability for these taxes on s'd rolling stock, even if the rolling stock levied upon be their property, and it would be unjust and inequitable for the State of Virginia to allow their complaint of illegality of assessment or levy.

Your respondents, further answering, say that under the act approved 22d of April, 1882, which is chapter 119, Acts of 1881–'2, page 506, sections 20, '1, every railroad company in Virginia not exempt from taxation is required to report annually, on the 1st of June, to the auditor of public accounts all of its real and personal property of every description as of the 1st of February of each year, including its roadway and track, depot and shops, rolling stock, and all other property, this report to be verified by the oath of the president or other officer; that upon this report the auditor is required to lay the same before the board of public works of the State, which shall, after thirty days' notice to the president or other proper officer of said company, proceed to ascertain and assess the value of said railroad property upon the best and most reliable information that

can be procured, including the power to send for persons and
50 papers; that when this assessment is made a certified copy of the same is to — immediately forwarded by said board to said railroad company so assessed, and then it becomes the duty of the said company to pay into the treasury of the State, within sixty days after the receipt thereof, the tax which is imposed thereon by law, and which, by the twenty-first section of the said act, is fixed at forty cents on the one hundred dollars of said ascertained assessed value. For the purpose of enforcing this statute and to compel said railroad companies to so report said property and *and* pay the tax imposed thereon a penalty is prescribed to this effect, that in the event of such failure the auditor of public accounts shall immediately assess said company, at the valuation of twenty thousand dollars per mile, at said rate of forty cents on every one hundred dollars thereof, and said tax shall be levied and collected by any treasurer to whom the auditor may deliver such assessment or a copy thereof, said treasurer being authorized by the statute to destrain and sell any personal property of such company for such taxes.

It was under this authority that the board of public works assembled and assessed the tax against the four said roads here-
51 inbefore named, and which said assessment was based upon the several reports heretofore exhibited and dated the 7th of August, 1882, and furnished by W. H. Ijams, treasurer of the Baltimore and Ohio Railroad Company, as well as of the other companies. The said board of public works met on the 22d day of November, 1882, and immediately thereafter copies of said assessment were forwarded to said companies for the payment of their taxes. As before stated, this assessment was fixed at fifteen thousand dollars per mile, and had the companies complied with the law, as was their duty, this sum would have been the basis of their taxation by the State, but said companies failed to comply with the law within the time prescribed by law and have not yet complied, and therefore the penalty was imposed on these derelicts by rating their property at twenty thousand dollars per mile, and the said auditor proceeded to place these assessments in the hands of John Ed. Hamilton, treasurer of Augusta county, for levy and collection, who proceeded to levy the same upon the property before mentioned, and has advertised the same in the manner before stated.

Respondents aver that in this matter they dealt with this
52 company as the law demanded, and prescribed for all taxpayers who refuse to pay those taxes that are imposed upon them by the State government.

Respondents aver that the property levied upon was found in the possession of the respective companies from which the taxes were due, and it was the rolling stock of railroads operated in Virginia, and was attached to, connected with, and partook of the same nature as the other property of said respective companies. It was connected with and devoted to the purposes and usage of said companies; it was found on the tracks of said companies, and therefore its *situs* and domicile were in Virginia, where the weight of authority declares that they are liable to be taxed as a part of the roads and

should be treated as the property of the company for all purposes of taxation.

Any other view of this case would license these railroad companies to enjoy all the rights and franchises of public carriers, and yet, by a species of circumvention, would deprive the State of her legitimate revenues, so that respondents insist, first, that the property levied upon was to all legal intents and purposes the property of the
53 companies that owed the taxes and liable therefor; or, second, if this be not the fact and the property be that of the Baltimore and Ohio Railroad Company, still, under the circumstances of the management, control, and operation of said divisional roads by the Baltimore and Ohio Company, the property is equally liable for said taxes.

Respondents beg to call the attention of the court to the fact that nowhere in the bill is there an express denial of ownership of said levied property in the Valley Railroad Company, but the whole bill in this regard seems to be a studied evasion on this material point.

Respondents deny that the said companies did not receive certified copies of their respective assessments from the board of public works, and that they were immediately forwarded to said companies after said assessments ac-ord- to law.

Respondents further deny most positively any payment of said taxes or any legal tender of them in the mode prescribed for the payment of taxes.

Respondents deny the averment of the bill that the $20,000 penalty is arbitrary and oppressive. They say that it is author-
54 ized and directed by section 20 of Acts 1881–'82, chapter 119, p. 306, and has often been declared by our highest courts to be valid and constitutional. Why the complainants speak of it as oppressive and the levy an "outrage" can only be accounted for for the reason that taxes to government are generally grudgingly paid.

Respondents deny the right of complainant, by injunction, to arrest the Commonwealth of Virginia in the collection of her taxes. They deny that complainants have no legal remedy for any grievance they may suffer by reason of said assessments and levies.

They have several plain, adequate, and complete remedies at law if entitled to redress in the foregoing regard. Injunction will not lie to restrain the commission of a pure, simple, and naked trespass, as the case here, if any wrong at all has been done by the respondents, for if an officer holding a tax assessment for the collection of taxes assessed against one man, levies said assessment on the property of another man the latter has his remedy by action against the officer for damages. The complainants seem to have been aware of
55 this doctrin-, and therefore they have sought to bring this case within some of the other branches that attach jurisdiction in the collection of taxation to the courts of equity. They have charged that the said assessments and levies amount to a fraud on complainants, cast a cloud on the title to the property, as well as an incumbrance thereon, and that the sale would produce irreparable damages to said railroad property. Respondents wholly deny each and all of said allegations.

There was no fraud unless it be fraudulent for a State to make her tax-payer pay her dues. There was no cloud on the title created unless the lien of a valid legal tax ticket or assessment casts a cloud on the title of the tax-payer, and there will be no irreparable damages from said sale other than that that ensues from the sale of the property of a taxpayer who refuses to pay his taxes, and each of these propositions respondents promise to sustain by authority.

Respondents further say that, by the laws of Virginia (chapter 37, sections 3 and 4, of the Code of 1873; Acts of 1881–'2, page 507, section 20), by a fair construction of them, any property found on the
56 premises is liable for taxation, and that in cases of taxation one man's property may be taken for another man's debt, particularly if this property is in the use and enjoyment of the tax-payer by lease, contract, or otherwise.

Respondents deny that John Ed. Hamilton, treasurer, will be unable financially to meet any damages that may be recovered against him by proceedings at law in the event of such recovery.

Complainants have not charged insolvency against respondent Hamilton, and such charge, if made, would be untrue, and he will be able to respond to any damages that can be recovered against him in these cases.

It is not true, as averred in the bill, that there are other railroad companies about to sue respondent Hamilton, and that therefore he will be unable to pay damages, for the respondents are glad to be able to state that within the past few days all of the other railroads doing business in this State liable for taxes except those in this suit have come forward and arranged or paid the amount of their taxes, so that the complainants, The Winchester and Potomac, Winchester and Strausburg, Strausburg and Harrisonburg, and
57 the Valley Railroad Companies, can now claim a monopoly in the distinction of resistance to the Commonwealth of Virginia in the collection of those resources that are indispensable to her prosperity.

Respondents deny the proposition that railroads or other common carriers are not equally, with all other citizens, amenable to the laws of the land. They deny that damages to railroads cannot be estimated; that they cannot get other cars and rolling stock, and that for these reasons the injunction asked for should be granted. They further deny that any multiplicity of suits necessitates the aid of a court of equity in this case. One suit for damages by the Baltimore and Ohio Railroad Company or respective suits by the said four companies would suffice for all purposes for damages, if any should accrue.

And now, having fully answered all of the material allegations of the said bill, respondents pray that upon the hearing of the motion of the complainants for the preliminary injunction prayed for in this case your honors will overrule said motion and refuse said injunction; and if upon the said hearing the injunction should be granted may this answer be filed, and, upon a motion hereafter to

be submitted, may said injunction be dis-olved and said bill
58 dismissed; and, as in duty bound, they will ever pray, &c.

(Signed) S. BROWN ALLEN,
Auditor of Public Accounts,
D. R. REVELY,
Treasurer of Virginia,
JOHN ED. HAMILTON,
Treasurer of Augusta County.
By F. S. BLAIR, *Attorney General,*

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, Robert D. Ward, a notary public for said city, in the said State, do certify that S. Brown Allen, D. R. Reveley, and John Ed. Hamilton, whose names are signed to the foregoing answer, each made oath before me that the statements and allegations in the said answer are true, so far as they rest upon their own knowledge, and they believe them to be true so far as they rest upon information obtained from others.

Given under my hand this — day of April, 1883.

(Signed) R. D. WARD, *N. P.*

59 The following letter of S. Brown Allen, auditor, to John Ed. Hamilton, is filed in this cause, which is in the words and figures here following, to wit:

COMMONWEALTH OF VIRGINIA,
OFFICE AUDITOR OF PUBLIC ACCT'S,
RICHMOND, *June* 23, '83.

John Ed. Hamilton, Esq., treasurer of Augusta county, Va.

DEAR SIR: Enclosed herein I send you an assessment of taxes, &c., due by the Baltimore & Ohio Railroad Company on its rolling stock, &c., operating the Winchester & Potomac, the Winchester & Strausburg, — & Harrisonburg, and the Valley Railroad Companies, for the years 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, & 1881, said taxes, &c., amounting to $22,249.25, and I hereby appoint you, the treasurer, to collect said taxes in the mode prescribed by law.

I am, very respectfully, your ob'd't serv't,

(Signed) S. BROWN ALLEN,
Aud. Pub. Acc'ts.

60 The following copy of order for injunction is filed in this cause and marked "B[1]," which is in the words and figures here following, to wit:

In the clerk's office of the circuit court of the United States of America for the western district of Virginia, at Danville, on the 6th day of July, 1883, the following order was received by the clerk and is here entered of record, to wit:

In the Circuit Court of the United States for the Western District of Virginia. In Vacation.

THE BALTIMORE AND OHIO RAILROAD COMPANY
vs.
S. BROWN ALLEN, JOHN ED. HAMILTON, & WM. R. SMITH.

This cause coming on to be heard in vacation, this 2d day of July, in the year 1883, upon the bill of the plaintiff and the exhibits therewith filed, and upon motion of the plaintiff for the preliminary injunction hereinafter awarded, the court being of opinion that, upon the facts stated in the bill, the plaintiff is entitled to the preliminary injunction as prayed for in the bill, it is therefore adjudged,
61 ordered, and decreed that the preliminary injunction prayed for in the bill be awarded, and that the said defendants, especially the said John Ed. Hamilton, treasurer of Augusta county, be enjoined and restrained from all further proceeding to levy upon, seize, and sell the property of the plaintiff mentioned in said bill, or any other property of said plaintiff, until the further order of this court.

It is further adjudged, ordered, and decreed that this cause be set for hearing at the next term of the circuit court of the United States for the western district of Virginia, to be holden at Danville, in said State, on August 28, 1883.

And it is further ordered and decreed that the said defendants have leave to move to dissolve the preliminary order of injunction hereby awarded at any time upon giving the plaintiff or his counsel ten days' notice of their purpose so to do and upon their filing a similar bond, conditioned & approved as complainant's bond, hereinafter described.

This injunction shall not take effect until the plaintiff or some one for it shall give bond in the penalty of two thousand dollars, with good security, conditioned according to law, which bond shall be approved by a judge of this court and shall be filed with
62 the clerk of the circuit court of the United States for said western district of Virginia, at Danville.

(Signed) HUGH L. BOND,
C't Judge.

Teste: G. W. MORRIS, *Clerk.*

A copy.

Teste:
[SEAL.] (Signed) G. W. MORRIS, *Clerk.*

63 The following agreement of counsel is filed in this cause and marked "B^2," which is in the words and figures here following, to wit:

The complainant in this case having made return and report to the board of public works of its rolling stock used and employed in operating the Valley Division of its lines and the valuation thereof for the year 1883, it is agreed that if upon the pleadings and proofs,

including a copy of the said complainant's report aforesaid, the court shall be of opinion that the complainant is liable to pay taxes on its rolling stock so used and employed for the ten years named in the report of W. R. Smith that such liabilities shall be ascertained and fixed upon the basis of the complainant's report aforesaid to the board of public works for the year 1883; and the defendants desiring to file an answer to said bill, it is agreed they may do so, and *that* so much of the joint & several answers of S. B. Allen & others in the case of the same complainant *vs.* said S. B. Allen, auditor, &c., pending in the U. S. court at Harrisonburg (involving chiefly the matter of the tender of coupons in payment of taxes, but also other matters claimed by the defendants to be similar to the questions in the cause), as shall be pertinent to the controversy in this cause, and at an early day after January 1, '84, the
64 parties, by their counsel, will argue the questions involved before the court and will have it disposed of upon the hearing; and it is further agreed that paper styled "Agreement of parties by counsel, marked X," to be filed in the Harrisonburg case, may be used as far as applicable & be filed as evidence in said Danville case, and such other evidence as either party may deem necessary upon full examination of the questions involved.

Richmond, Dec'r 20, '83.

(Signed) HUGH W. SHEFFEY,
For B. & O. Co.

" F. S. BLAIR, *Atto. Gen., for Def'ts.*

65 The following agreement of counsel is filed in this case and marked "B³," which is in the words and figures here following, to wit:

BALTIMORE & OHIO R. R. COMPANY
vs.
S. B. ALLEN, Auditor, & Others. } In Chancery.

Upon an injunction.

In the above-entitled cause, which was docketed in the circuit court of the United States for the western district of Virginia, at Danville, but which has been transferred to & docketed in the said circuit court at Harrisonburg, it is agreed by the undersigned counsel, representing the parties, that said cause shall be submitted for the decision of the judge of the district court of the United States for the western district of Virginia for decision, in vacation, with the understanding that at the instance & request of either party such decision may be reviewed by the judge of the fourth judicial district as if sitting with said district court judge, acting as circuit court judge, at the hearing of said cause. Either party may, within twenty days, file notes of argument with said judge, who shall thereupon proceed to act in said case.

May 8th, 1884.

(Signed) HUGH W. SHEFFEY,
Counsel for B. & O. R. R. Co.
F. S. BLAIR, *Atto. Gen., for Def'ts.*

66 The following statement, showing the tax imposed for the year 1883 upon the real and personal property and income of railroad companies in the Commonwealth of Virginia, is filed in this cause and is marked "B^4," which is in the words and figures here following, to wit:

68 The following agreement of counsel, marked "X," is filed in the cause, which is in the words and figures here following, to wit:

In the Circuit Court of the United States for the Western District of Virginia. In Chancery.

THE BALTIMORE & OHIO RAILROAD COMPANY, Complainant,
vs.
S. BROWN ALLEN & Others, Defendants.

The parties, by their counsel, desiring that the above cause shall be promptly disposed of in the said circuit court, so that the questions involved may be speedily and finally decided by the Supreme Court of the United States, with a view to this end do agree—

First. That at as early a day as may suit the convenience of said Court the said cause shall be submitted for final hearing and decree, and that at such hearing the exhibits and affidavits read at the preliminary hearing shall be taken, received, and read, respectively, as exhibits duly proved and as depositions regularly taken; that the papers filed by the defendants as their joint and several affidavits shall at said final hearing be taken, received, and read as their joint and several answer, upon which issue shall be deemed to have been duly made up; and thereupon the cause shall be submitted to the Court for such final decree upon the pleadings,
69 issues, and proofs aforesaid, and on the agreement of parties contained in this writing, and on any other exhibits, affidavits, or depositions which may by consent of parties be proved, taken, and filed before such final hearing, and also upon a motion, as if made in due form, by the defendants for a dissolution of the injunction awarded in said cause by the decree therein rendered on the — day of May, 1883.

Second. That at such final hearing, in connection with that portion of said decree of May —, 1883, as declares "that the tender of coupons by the complainant was a valid tender in payment of the taxes assessed, as stated in the bill, and that the levies made by J. Ed. Hamilton, treasurer, &c., to collect said taxes thereafter were and are illegal," it shall be taken as admitted that the coupons shown with the bill and tendered as alleged in the bill admitted by the answers are genuine tax-receivable coupons, as charged by the bill and not denied by the answer, and that the tender of said coupons as made to the first auditor shall be treated as made also to the second auditor of Virginia; but it is understood that the aforesaid concession as to the genuineness of said coupons is without prejudice to the contention of the defendants in other respects—that is to say, that said coupons, though genuine, have not been sub-

Commonwealth of Virginia. Compiled by the Auditor of Public Accounts ırsuant to Sections 20 and 21 of the Act Imposing Taxes, Approved April

	Miscellaneous property.	Total value of all property, real and personal.	Total tax on real and personal property at 40 cents on the $100 value.	Net income.	Tax on net income at one per centum.	Total tax on the total value of real and personal property at 40 cents on the $100 value, and on the net income at one per centum.
---	---	$472,600 00	$1,890 40	---	---	$1,890 40
---	---	90,000 00	360 00	---	---	360 00
---	---	9,634 74	38 54	---	---	38 54
---	---	15,130 46	60 52	---	---	60 52
---	---	39,120 66	156 08	---	---	156 08
---	---	12,406 68	49 63	---	---	49 63
50	---	148,900 00	595 60	$4,904 44	$49 04	644 64
---	---	425,500 00	1,702 00	---	---	1,702 00
12	$5,000 00	5,715,439 44	22,861 76	---	---	22,861 76
50	---	950 00	3 80	---	---	3 80
---	---	104,300 00	417 20	---	---	417 20
---	---	122,500 00	490 00	---	---	490 00
---	---	978,000 00	3,912 00	---	---	3,912 00
---	---	25,150 00	100 60	---	---	100 60
---	---	49,930 00	199 72	5,296 67	52 97	252 69
---	1,200 00	391,520 00	1,566 08	---	---	1,566 08
---	---	7,332,534 00	29,330 13	51,015 32	510 15	29,840 28
---	---	75,000 00	300 00	---	---	300 00
---	---	75,000 00	300 00	---	---	300 00
---	---	585,000 00	2,340 00	---	---	2,340 00
---	500 00	33,750 00	95 00	5,123 34	51 23	146 23
---	---	113,184 00	452 74	---	---	452 74
---	5,698 51	784,841 64	3,139 37	---	---	3,139 37
---	---	130,050 00	520 20	---	---	520 20
---	5,000 00	32,800 00	131 20	---	---	131 20
---	---	3,851,073 00	15,404 29	---	---	15,404 29
---	---	776,600 00	3,106 40	10,011 00	100 11	3,206 51
---	---	25,000 00	100 00	14,691 09	146 91	246 91
---	---	43,450 00	173 80	---	---	173 80
000	10,000 00	3,657,325 00	14,629 30	---	---	14,629 30
---	---	742,600 00	2,970 40	---	---	2,970 40
---	---	2,768,268 26	11,073 07	---	---	11,073 07
500	---	60,150 00	240 60	1,448 58	14 49	255 09
---	---	3,600 00	14 40	---	---	14 40
---	---	392,750 00	1,571 00	4,915 19	49 15	1,620 15
---	3,000 00	4,898,950 00	19,595 80	---	---	19,595 80
---	---	386,250 00	1,545 00	---	---	1,545 00
---	---	172,055 00	688 22	4,568 81	45 69	733 91
---	---	286,000 00	1,144 00	---	---	1,144 00
912	$30,398 51	$35,817,212 88	$143,268 85	$101,974 44	$1,019 74	$144,288 59

(Signed) S. BROWN ALLEN,
Auditor of Public Accounts.

jected to the test of jury trial under the act of January 14th, 1882.

70 Third. It is conceded that after the payment of his debts and those for which he is bound and which he will probably have to pay and after setting apart out of his estate a sum equivalent to his homestead and legal exemptions the residue of the estate of J. Ed. Hamilton does not exceed in value $8,000, and including the amount of such homestead and other legal exemptions it does not exceed in value $10,000, but that said J. Ed. Hamilton had executed an official bond, as treasurer of Augusta, in the penalty of $200,000, with sureties, which had been approved by the court, a copy of which may be filed for greater certainty if either party elects so to do; but either party may file copies of the assessment of said Hamilton's property as a part of the evidence.

Fourth. That should the property of complainant levied on by said J. Ed. Hamilton be sold as advertised in the Valley of Virginia great sacrifice and loss must result therefrom, and that the withdrawal from complainant's use of the amount of rolling stock and machinery levied on and proposed to be sold as aforesaid will cause serious and prolonged embarrassment to complainant's business; that much delay must occur before such rolling stock and machinery, if sold, can be replaced, and that it will be difficult, if not impracti-

71 cable, to ascertain and estimate with even proximate certainty the losses and damages which would result to complainant from such sale, so that, altho' the estate of said J. Ed. Hamilton should be sufficient to meet any verdict for damages, in case the sale should be adjudged to have been illegal the pecuniary value of complainant's losses and damages could not be properly and adequately ascertained and fixed by the verdict of a jury, but that said company had much other rolling stock not embraced in the levy employed on this and its other lines.

Fifth. That it is conceded, for the purposes of this suit, that the Baltimore & Ohio Railroad Company is the lessee of the three roads styled the Winchester & Potomac, the Winchester & Strausburg, and the Strausburg & Harrisonburg railroads, and that the property of the complainant found on the leased premises is and was liable to legal levy for taxes due to the Commonwealth of Virginia, but said Baltimore & Ohio Railroad Company is not and was not at the time of the levy in this case in possession of the track and property of the Valley Railroad Company, as lessee or renter, or in any manner liable for the taxes or debts of the Valley Railroad Company or otherwise whatsoever; that the Valley Railroad Company is

72 now and was at the time of said levy in the exclusive possession of and now exercises and at the time of such levy did exercise exclusive control over its own track and property; that it owns no rolling stock and has its work done in and by the engines, cars, and rolling stock of the Baltimore & Ohio Railroad Company and other companies for hire, and that the property levied on for the taxes of the Valley Railroad Company, with the exception of a few articles of office furniture, was wholly and exclusively the prop-

erty of the Baltimore & Ohio Railroad Company and was found on the track of the Valley Railroad Company.

But it is understood that the court shall, upon this statement of facts, decide whether the property of the Baltimore & Ohio Railroad Company was, under the circumstances, liable to legal levy for the taxes due from the Valley Railroad Company.

Sixth. It is conceded that notice of the assessments by the board of public works against the four companies was received by Jno. W. Davis, assistant to vice-president of the Baltimore & Ohio Railroad Company, on the 17th day of January, 1883, and that prior thereto no notice of such assessments was given to any person rep-
73 resenting either of said companies or to either of said companies as required by the act of Assembly.

Seventh. That John W. Davis is the assistant to the vice-president of the Baltimore & Ohio Company, and that James W. Davis is the track-master of the Valley Railroad Company, and has had no connection with this case.

Eighth. It is conceded that the bond in the penalty of seventeen thousand dollars, with sufficient sureties thereon, has been given by the complainant in accorda-ce with the decretal order of May —, 1883, awarding the preliminary injunction; that process thereon has been issued and executed on the defendants, and it is agreed that the cause shall be placed on the docket as duly matured for hearing.

Ninth. In making up the record it shall not be necessary to copy all the coupons shown with the bill, but only one or more of them as samples of the same tendered and under the control of the court.

The following endorsement appears on the back of the foregoing agreement of parties by counsel:

We consent that the within paper be filed and its contents made part of the record in the above-entitled cause, pending in the United States court for the western district of Virginia.

(S'g'd) HUGH W. SHEFFEY,
Counsel for B. & O. Co.

(S'g'd) F. S. BLAIR,
Att'y Gen., for Def'ts.

74 The following statement of the rolling stock owned by the Balto. & Ohio R. R. Co. and used by it in operating the Winchester & Potomac railroad and the Winchester & Strausburg railroad and the railroad from Strausburg to Harrisonburg, and also of the rolling stock of the B. & O. R. R. Co. employed by the Valley railroad in operating the Valley railroad, is filed in this case and marked Exhibit "B^6," which is in the words and figures here following, to wit:

Rolling Stock Running from Wadesville to Staunton.

Engines & cars.	Average per day.	Value ea.	Total.	Grand total.
8-wheel passenger engines	3.79	$4,000	15,160	
1 ballast engine	4.16	2,000	2,000	
8-wheel pass. coaches	.17	4,000	9,360	
12 parlor cars	.93	300	680	
8 express cars	.875	1,000	279	
8 freight cars	87	250	21,750	
				$50,104 00

Rolling Stock Running from Wadesville to Harrisonburg.

Engines & cars.	Av. p'r da.	Value ea.	Total.	
10-wheel camel engines	3.87	$4,000	15,480	
8 " pass. cars (or fr'g't trains)	4.73	2,000	9,460	
8-wheel combination cars	.137	2,000	274	
				25,214 00

Rolling Stock Running from Wadesville to Winchester.

Engines & cars.	Av. p'r da.	Val. ea.	Total.	
8-wheel baggage cars	.875	1,000	875	
				875
				$76,193 00

75 *Apportionment of Rolling Stock.*

Total value of rolling stock running thro' from Wadesville to Staunton—distance, 105 miles—$50,104.00.

Name of railroad.	No. miles.	Propor.	Amount.
Winchester & Potomac R. R.	11	$\frac{11}{105}$	5,248 98
Winchester & Strausburg	19	$\frac{19}{105}$	9,066 48
Strausburg & Harrisonburg	49	$\frac{49}{105}$	23,381 82
Valley railroad	26	$\frac{26}{105}$	12,406 68

Total value of rolling stock running from Wadesville to Harrisonburg—distance, 79 miles—$25,214.00.

Name of railroad.	No. miles.	Proportion.	Amount.
Winchester & Potomac R. R.	11	$\frac{11}{79}$	3,510 76
Winchester & Strausburg R. R.	19	$\frac{19}{79}$	6,064 04
Strausburg & Harrisonburg	49	$\frac{49}{79}$	15,638 84

Total value of rolling stock running from Wadesville to Winchester, distance —, $875.00.

Name of railroad.	No. mi.	Propor.	
Winchester & Potomac	11	$\frac{11}{11}$	$875 00

76 *Recapitulation.*

Name of railroad.	Value of through rolling stock.	Value of rolling stock running to Harrisonburg.	Value of rolling stock running to Winchester.	Grand total.
Winchester & Potomac	5,248 98	3,510 76	875 00	9,634 74
" & Strausburg	9,066 42	6,064 04	------	15,130 46
Strausburg & H.	23,381 82	15,638 84	------	39,020 66
Valley R. R.	12,406 68	----------	------	12,406 68

(S'g.) WM. H. IJAMS, *Tr.*

Sworn to by Wm. H. Ijams, treasurer, before John Howard, N. P. Official character of John Howard certified by Richard T. Allison, clerk of superior court of Baltimore city.

77 The following affidavit of Wm. M. Clements, master of transportation of the Baltimore and Ohio Railroad Company, is filed in this cause and marked Exhibit "W. M. C.," which is in the words and figures here following, to wit:

STATE OF MARYLAND, *City of Baltimore,* } *sct:*

William M. Clements, being first duly sworn, says that he is the master of transportation of the Baltimore and Ohio Railroad Company, and has entire charge of the rolling stock of said company while it is employed in transportation; that as such master of transportation he has charge of all rolling stock passing over the main line and branches of the Baltimore and Ohio railroad, including the Parkersburg branch, the Winchester and Potomac, Winchester and Strasburg, Strasburg and Harrisonburg, and Valley railroads. The rolling stock, consisting of engines and cars used in running over the four Valley lines, so called—that is to say, the Winchester and Potomac railroad, the Winchester and Strasburg, and
78 the Strasburg and Harrisonburg railroad, so called, being a part of the Manasses Gap railroad from Strasburg to Harrisonburg, the Valley railroad, from Harrisonburg to Staunton and now to Lexington, Virginia—is the property of the Baltimore and Ohio Railroad Company, but this rolling stock is used interchange-

ably upon all the lines of the Baltimore and Ohio railroad and its branches. There is no such rolling stock assigned permanently to the four lines above named or either of them in the State of Virginia.

The trains in which the rolling stock is used on the four lines above named now start from Lexington, Virginia, and pass through the State of Virginia, over the four lines of railroad above named, into the State of West Virginia, and thence into the State of Maryland to the city of Baltimore, or, if any of the cars are destined to Western points, thence from Harper's Ferry to the West, but the trains in which the cars are hauled are run solid from Lexington, Virginia, and formerly, before the road was completed, to Lexington from Staunton, Virginia, to Baltimore.

None of the rolling stock is assigned permanently to service in the State of Virginia, nor is any of the rolling stock set apart to the four lines in that State or to the four Valley lines
79 above mentioned at all, but such rolling stock is used interchangeably upon the main line and branches of the Baltimore and Ohio railroad in the States of Maryland and Virginia, and indeed also upon the divisions of the Baltimore and Ohio railroad in Pennsylvania and in States west of the Ohio river, just as the necessities of the service of the company require. Sometimes this rolling stock will be found on the main line, sometimes on the Pittsburgh Division, sometimes on the Trans-Ohio Divisions, and there is none of it that is permanently set apart for use upon the four Valley lines in Virginia above described.

The Baltimore and Ohio Railroad Company is a corporation organized under the laws of Maryland by the act of 1826, chapter 123 of the Acts of the Maryland Legislature, and under that act the rolling stock of the company is exempt from taxation.

In 1876, under the laws of the State of Maryland, when the regular decennial general assessment was made in the State of Maryland of all property in that State or belonging to corporations of that State, the entire rolling stock of the Baltimore and Ohio Rail-
80 road Company was valued and assessed to the Baltimore and Ohio Railroad Company in the city of Baltimore, where the home or principal office of the company is situated. This assessment was made in accordance with the laws of Maryland, which required all personal property of a corporation to be assessed at the home office of the company within the State under its charter. Under the act of 1826, above referred to, however, the court of appeals of Maryland decided that all the property of the company was exempt from taxation, and consequently, though the property was assessed upon the regular tax assessment books, the company was not obliged to pay taxes thereon, because of the fact that its charter exempted it from taxation. The rolling stock thus assessed in the city of Baltimore includes all the cars, engines, and rolling stock employed on the four Valley lines above referred to, and indeed includes all of the rolling stock of the company. Owing to the decision of the court of appeals the property was held to be not taxable.

And further deponent saith not.
(Signed) W. M. CLEMENTS, *M. of T.*

81 Subscribed and sworn to before me this 31st day of May, A. D. 1884.
(Signed) W. R. TUMBLINSON, *J. P.*

STATE OF MARYLAND, *Baltimore City,* } *sct:*

I hereby certify that William R. Tumblinson, Esquire, before whom the annexed affidavit was made and who has thereto subscribed his name, was at the time of so doing a justice of the peace of the State of Maryland in and for the city of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments. I further certify that I am acquainted with the handwriting of the said justice and verily believe the signature to be his genuine signature.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore city this 31st day of May, A. D. 1884.
[SEAL.] (Signed) JAS. BOND,
Clerk of the Superior Court of Baltimore City.

82 And at another day, to wit, on the 20th day of May, 1884, the following order is entered of record in this cause, which is in the words and figures here following, to wit:

THE B. & O. R. R. Co. *vs.* S. BROWN ALLEN, Auditor, & Others.

In this cause, on motion of the defendants, leave is given them to file their joint and several answers, which is accordingly done.

And on the same day, to wit, on the 20th day of May, 1884, came the defendants, by their attorney, and, with leave of court, filed their joint and several answers in this cause, which are in the words and figures here following, to wit:

In the Circuit Court of the United States for the Western District of Virginia.

To the honorable judges thereof:

The answer and demurrer of S. Brown Allen, auditor of public accounts, William R. Smith, and John Edward Hamilton,
83 treasurer of Augusta county, all of the State of Virginia, to a bill exhibited in your honorable court by the Baltimore & Ohio Company against them: By way of demurrer to said bill they say that the same is insufficient in law for the relief claimed; and, without waiving the same but insisting thereon, for answer thereto, answering, they say that the Balt. & Ohio Railroad Company has for many years been running and operating the lines of the Winchester and Potomac Railroad Company, the Winchester and Strausburg Railroad Company, and the Strausburg & Harrisonburg Railroad Company, a continuous line of railway from Winchester, Vir-

ginia, to Harrisonburg, in the same State. The said roads may have been originally distinct corporations, but, as stated, they have been operated by the Baltimore & Ohio Railroad Company's for some years past.

Respondents, further answering, say that the said Baltimore and Ohio Railroad Company's has also had virtually under its control in this way —; that the said Baltimore & Ohio Railroad Company have furnished to the Valley railroad all the rolling stock that was necessary to operate the said road.

84 Under the circumstances and by virtue of the revenue laws of the State, found in Acts of 1881–'2, page —, William R. Smith was appointed by the auditor of public accounts as assessor of taxes assessed against the Balt. & Ohio Railroad Company by *him* due to the State of Virginia, and, on the 23rd of June, 1883, he made a report of the said taxes and of the penalty-'s imposed by law for the failure of the said company to make due reports and pay the taxes as required by law of and upon the value of the rolling stock, including passenger, freight, cattle, stock, baggage, mail, express, sleeping, palace, parlor, and all other kinds of cars, machinery, and the equipments owned by or belonging to said Balt. & Ohio Railroad Company in operating the Winchester and Potomac railroad, the Winchester & Strausburg railroad, the Strausburg and Harrisonburg railroad, and the Valley railroad, and said W. R. Smith found and reported that the Balt. & Ohio Railroad Company had made no reports to the auditor's office of Virginia of said rolling stock operated on its Virginia — named from the years 1870 to the year 1881;

85 that the amount- of said penalty-s were as follows:

Year.	Value of rolling stock, &c.	Tax.
1870	$150,000 00	$750 00
1871	150,000 00	750 00
1872	150,000 00	750 00
1873	150,000 00	750 00
1874	150,000 00	750 00
1875	528,550 00	2,642 75
1876	528,550 00	2,642 75
1877	528,550 00	2,642 75
1878	528,550 00	2,642 75
1879	528,550 00	2,642 75
1880	528,550 00	2,642 75
1881	528,550 00	2,642 75
Total	$4,449,850 00	$22,249 25

This will fully appear from the report of W. R. Smith, herewith filed, marked "W. R. S."

Your respondents further say that under the act approved April 22d, 1882, already refer-ed to and which is chapter 119, Acts 1881–'2, page 506, section- 20 and 21, every railroad company in Virginia not exempt from taxation is required to report annually, on the 1st of June, to the auditor of public accounts all of its real & personal property of every description as of the 1st of February of each year, including its roadway and tract, depot and shops, rolling stock, and all
86 other property, this report to be verified by the oath of the president or other officer; that upon this report the auditor is required to lay the same before the board of public works of the State, which shall, after thirty days' notice to the president or other proper officer of said company, proceed to ascertain and assess the value of said railroad property upon the best and most reliable information that can be procured, including the power to send for persons and papers; that when this assessment is made a certified copy of the same is to be immediately forwarded by said board to said railroad company so assessed, and then it becomes the duty of the said company to pay into the treasury of the State, within sixty days after the receipt thereof, the tax which is imposed thereon by law and which by the 21st section of the said act is fixed at forty cents on the hundred dollars of said ascertained assessed value. For the purpose of enforcing this statute and to compel said railroad companies to so report said property and to pay the tax imposed thereon a penalty is prescribed to this effect, that in event of such failure the auditor of public accounts shall immediately assess said company, at the
87 valuation of twenty thousand dollars per mile, at said rate of forty cents on every one hundred dollars thereof, and said tax shall be levied and collected by any treasurer to whom the auditor may deliver such assessment or a copy thereof, said treasurer being authorized by the statute to destrain and sell any personal property of such company for such taxes.

The same law has prevailed in Virginia substantially since the year 1870. See Acts 1867–'7, page 136; Acts of 1875–'6, page 171; Acts 1874–'5, page —; Revenue Laws, 1882, of Virginia, by Auditor Allen, page 42; Code 1873, chapter 33, section —, page 315. It was under this authority that the auditor of public accounts appointed W. R. Smith to make said assessments, and the penalties are rightfully due to the Commonwealth from complainants. Respondents aver that the property levied upon was found in the possession of the respective companies from which taxes were due, and it was the rolling stock of the railroads operated in Virginia *and* was attached to, connected with, and partook of the same nature as the other property of said respective companies. It was connected with and de-
88 voted to the purposes and usage of said companies. It was found on the tracks of said companies, and therefore its *situs* and domicile were in Virginia, where the weight of authority declares that they are liable to be taxed as a part of the roads and should be treated as the property of the company for all purposes of taxation.

Any other view of this case would license these railroad companies to enjoy all the rights and franchises of public carriers, and yet,

by a species of circumvention, would deprive the State of her legitimate revenues, so that respondents insist, first, that property levied upon was, to all legal intents and purposes, the property of the companies that owed the taxes and liable therefor; or, second, if this be not the fact and property be that of the Baltimore and Ohio Railroad Company, still, under the circumstances of the management, control, and operation of said divisional roads by the Baltimore and Ohio Company, the property is equally liable for said taxes.

Respondents beg to call the attention of the court to the fact
89 that nowhere in the bill is there an express denial of ownership of said levied property in the Valley Railroad Company, but the whole bill in this regard seems to be a studied evasion on this material point.

Respondents deny that the said companies did not receive certified copies of their respective assessments from the board of public works, and they say that they were immediately forwarded to said companies after said assessments according to law. If there was any further evidence needed to show the liability of the B. & O. Railroad Company in this case it would be found in the fact that they have admitted their liability recently in this way, that they have made return & report to the board of public works of Virginia of its rolling stock used and employed in operating the Valley Division of its lines and the valuation thereof for the year 1883.

This is the most unqualified admission by the B. & O. railroad of its liability for the penalties reported against them by W. R. Smith and set forth in this answer.

There is no question but that this company by a mere device has sought to deprive the Commonwealth of the taxes due her
90 from the Valley railroads lines on their rolling stock.

The B. & O. Company operates the said roads either by a lease or by some private arrangement, and thus she becomes responsible to the State for the taxes on said rolling stock.

The facts are that the B. & O. Railroad Company operates as a part of their line of railway the W. & P. road, the W. & S. road, the S. & H. road, and the Valley road. The latter are but branch roads of the B. & O. road, and they give to the B. & O. road a continuous line of railway from its main stem at Winchester to Staunton by the branch lines just named, all four of which are wholly in the State of Virginia.

These branches were incorporated by Virginia laws, organized as bodies politic in Virginia, and they are therefore subject to all the tax laws of this State.

Respondents further say that such is the corporate identity of these companies and such the ownership, management, and control of the said four companies by the Baltimore and Ohio Railroad Company that the officers of the one are the officers of the
91 other in many instances; that Sam'l Spencer, the third vice-president of the Baltimore & Ohio railroad, is the president of the Valley railroad, as also a director thereof, elected as late as November 10, 1881; that W. H. Ijams is the treasurer and acting secretary of the Baltimore & Ohio road, and at the same time the

treasurer and acting secretary of the Valley railroad; that James W. Davis is the assistant to the first vice-president of the Baltimore & Ohio railroad, and at the same time is road-master of the Valley railroad, and the Baltimore and Ohio Railroad Company have as complete control, by some form of contract or arrangement (which is wholly immaterial to the purposes of this case), of the said Winchester & Potomac, Winchester and Strasburg, Strasburg and Harrisonburg, and the Valley railroads as any landlord or owner of property could possibly have over lands or personals committed to the care of managers or operatives; that for some years past the Baltimore & Ohio railroad has been recognized and treated as the parties responsible to the State of Virginia, and in other ways have recognized their liability and held themselves out to the
92 world and to the State as liable for said branch railroads, taxes, and therefore the B. & O. Company are now estopped to deny their liability for the taxes on the rolling stock used on the branch roads, even though that rolling stock be the property of the B. & O. Company.

It was to collect these penalties that the levy was made by John E. Hamilton, tr's., &c., and respondents insist that the levy was regular, legal, and absolutely necessary to enforce the collection of said penalties for the failure of said companies to report the rolling stock used on said branch road. Respondents deny all the allegations of the bill and the inferences of law contained therein inconsistent with the foregoing answer, and call on the complainant for strict proof thereof; and now, having fully answered said bill, the prayer of respondents is that the injunction in this case be dissolved and the bill be dismissed and decree entered declaring the said B. & O. road liable for the said penalties reported by said W. R. Smith and for costs of this proceeding; and, as in duty bound, they will ever pray, &c.

(Signed) S. BROWN ALLEN,
Auditor, & Als., Respondents.

93 VIRGINIA, }
City of Richmond, } *To wit:*

I, Robert D. Ward, a notary public for said city, in said State, do certify that S. Brown Allen and John E. Hamilton, whose names are signed to the foregoing answer, made oath before me that the statements and allegations in the said answer are true, so far as they rest upon their own knowledge, and they believe them to be true so far as they rest upon information derived from others.

Given under my hand and — this — April, 1883.

(Signed) R. D. WARD, *N. P.*

94 The following note of argument by plaintiff's counsel is filed in this cause, which is in the words and figures here following, to wit:

The counsel for the plaintiff submits—

1. A copy of the injunction order, "B^1."
2. The agreement of counsel, dated Dec. 20, '83, "B^2."

3. The agreement of counsel, dated May 8, '84, "B^3."

4. The printed statement of assessment, dated Nov'r 27, '83, signed by the auditor, contain'g the rate of taxation of rolling stock assessed against the B. & O. Co., if said company is liable in respect thereto, "B^4."

5. The copy of agreement of counsel, "X," filed in the coupon cases, and filed now, at the request of the attorney general, as evidence, as far as applicable, in this case, "B^5."

Note.

1. The property assessed is that of the Baltimore and Ohio Railroad Company, a Maryland corporation engaged in operating the lines of the four roads owned by Virginia corporations, which owned no rolling stock, either for hire or as a lessee. The B. & O. Company used part of its rolling stock in running over these
95 Virginia roads, as its Valley Branch or Division. The report of the treasurer of the company, a copy of which is herewith filed, marked "B^6," gives only the average amount of rolling stock running over or operating these lines in connection with its main line and thro' business passing thro' the States of Virginia, West Virginia, and Maryland. The headquarters or domicile of the company was and is in Baltimore, where all the rolling stock interests of the company necessarily center and belong. See affidavit of Wm. M. Clemments, herewith filed, marked "B^7," said Wm. M. Clemments being master of transportation of said B. & O. R. R. Co. The rolling stock so used and employed is necessarily perambulatory, and is daily passing thro' the three States named and tending towards the domicile or headquarters of the company in Baltimore, where the legal *situs* of the rolling stock, whether regarded as movable fixtures or as personal property, belongs. It would hardly be within the range of the taxing power of West Virginia to impose taxes on the transient trains of the B. & O. Company passing thro' the space between Wadesville and Harper's Ferry from Virginia into Maryland and *vice versa*, a distance of only a few miles; and, in fact, there is no more permanency in the *situs* in Virginia of the trains moving from Lexington thro' the Valley of Virginia to and fro daily, and necessarily being half of the time or more out
96 of the limits and jurisdiction of Virginia, than there is in respect to such trains or rolling stock flitting daily thro' West Virginia. It has been held that the Pullman cars attached to passenger cars and moving to and fro over the lines of railroads, altho', on the average, there may be daily a half dozen or more of them on a given line of road, are not subject to taxation in the States thro' which they move. Their *situs* is at Chicago or at the headquarters or domicile of the company which furnishes them.

It is clear that if Virginia can tax this rolling stock at its full value West Virginia may do the same and Maryland may do the same, and the means and agencies of carrying on commerce between the States may be burdened with double, triple, quadruple taxation—nay, with such taxation as may seriously endanger the com-

merce itself. The comity of nations would seem to require, and especially the comity between the States of the Union would seem to demand, that Virginia trains passing into and thro' West Virginia should not be taxed in that State or in Maryland, the business extending into and perhaps (as the case with the Shenandoah Valley trains) thro' that State and into the State of Pennsylvania. The principle recognized by the supreme court of appeals of Maryland in the following cases is the proper one:

See 50th Maryland, page 397:

1. Philadelphia, W. & B. R. R. Co. *vs.* Appeal Tax Court,
97 &c.: That was the case of a foreign corporation doing business in Maryland (with its principal office or place of business in Philadelphia), but owning large leasehold estates in Baltimore and doing a large business in that city (indeed, as it seems, a chartered company under the laws of Maryland); still the residence of the corporate owner of the rolling stock was respected and the property was held not to be liable to taxation in Maryland.

50th Maryland, page 417:

2. Appeal Tax Court *vs.* Northern Central R. R. Co.: In this case, the principal office or place of business of the company being in Baltimore, the *situs* of its rolling stock, altho' running thro' Maryland and Pennsylvania, was fixed in Baltimore city. In Burroughs on Taxation, p. 186, cases cited in note 3, and in Cooley on Taxation, p. 273, the rule is recognized "that such engines & cars are personal property and have no other *situs* than the residence of their corporate owner." In Maryland State *vs.* N. C. R. R. Co., 18 Md., 217, it was held that such rolling stock was in the nature of movable fixtures; but even if they were so regarged, contrary to the almost universal rule elsewhere, still their *situs* for purposes of taxation must be that of the corporation to which they belong, unless it be provided that the particular engines, cars, &c., were sev-
98 ered from the general rolling stock of the company and their movement definitely confined within some locality separate from the domicile of the owner. It must be presumed that the cars and engines owned by the B. & O. Company are used from day to day in conveying freight and passengers to and from the *situs* of said company, which is in the city of Baltimore, and that they have no *situs* for purposes of taxation except the taxable *situs* of said company, which is in the city of Baltimore. Clements' statement shows that this presumption is sustained by the facts.

See also the case of Tax Appeal Court *vs.* Pullman Car Co., 50th Maryland, 452, which affirms the same principle.

The only possible ground upon which the tax attempted to be imposed upon the plaintiff in respect to its rolling stock could be sustained is that, however perambulatory in its movements and unpermanent in its uses, such rolling stock partakes of the character of movable fixtures, with the odor of realty about it. This view is now generally repudiated; and, even in Maryland, as is seen in the

three cases cited from 50th Maryland, the court do not reaffirm the decision in 18th Maryland, but use the words "whether it is to be considered as movable fixtures or as personal property;" the result is the same.

99 Special attention of the court is called to the able arguments of Donaldson & Steele (if allowed by the court), pp. 399 to 402, and the authorities cited by them, to sustain our views in this case, and particularly to the cases sustaining the proposition: "Where the question is between sovereignties, with regard to all property, as well personal as real, the *lex rei sitæ* is the only consistent rule, and is being now everywhere allowed." This principle, coupled with that other, equally well settled, that of a corporation, which can have but one domicile as to its business, the personal property can have no other *situs;* that the domicile of the corporation itself shows that, as between Virginia and Maryland, the true *situs* of the rolling stock in this case is in the city of Baltimore. The Supreme Court of the United States, in the case of the Balto. & Ohio Company *vs.* Wightman's Adm'r, &c., settle the question that the B. & O. Company has its domicile in Maryland, its principal office and place of business being in Baltimore. The acts of the Virginia Legislature, in connection with the B. &. O. Company, recognize it as a Maryland corporation, and, so far as such recognition goes, place it upon higher ground than that of mere comity between sovereign States. It is insisted, also, that, upon a proper scrutiny of the acts of Assembly of Va., it does not appear that it was intended to tax such property as this.

(Signed) HUGH W. SHEFFEY,
Counsel of B. & O. Co.

100 The following is the opinion of the court filed in this cause, which is in the words and figures here following, to wit:

The Baltimore & Ohio Railroad Company, a corporation under the laws of the State of Maryland, has for a number of years been the lessee of the following railroads in the State of Virginia, incorporated by various acts of the Virginia Legislature, and are owned by Virginia corporations, viz., the Winchester and Potomac railroad, the Winchester and Strausburg railroad, and the Strausburg and Harrisonburg railroad, the last-named being part of the old Manassas Gap railroad. The said Baltimore and Ohio R. R. Company also works or operates the Valley railroad from Harrisonburg to Staunton. None of these railroads so leased and operated by the Baltimore and Ohio Railroad Company own any rolling stock, but the same is furnished by the Baltimore and Ohio Company.

The domicil or home office of the Baltimore and Ohio Railroad Company is in the city of Baltimore, State of Maryland.

Section 20, chapter 119, of Acts of the Virginia Legislature, session 1881-'2, prescribes the mode of assessing railroads and canals for purposes of taxation, and the following provision designates what property shall be taxed:

101 Every railroad and canal company not exempted from taxation by virtue of its charter shall report annually on the first

day of June to the auditor of public accounts all of its real and personal property of every description as of the first day of February of each year, showing particularly in what county or corporation such property is located and classifying the same under the following heads:

First. Roadway and track or canal bed.

Second. Depots, depot grounds and lots, station buildings and fixtures, and machine shops.

Third. Real estate not included in other classes.

Fourth. Rolling stock, including passenger, freight, cattle or stock, baggage, mail, express, sleeping, palace, and all other cars owned by or belonging to the company; boats, machinery, and equipments, houses and appurtenances occupied by lock-gate keepers and other employees.

Fifth. Stores.

Sixth. Telegraph lines.

Seventh. Miscellaneous property.

The said railroad companies, the Winchester and Potomac, the Winchester and Strausburg, the Strausburg and Harrisonburg, and the Valley railroads, made their reports to the auditor of public accounts, as required, and were by the board of public works
102 duly assessed on their roadways and tracks, depots, and other real estate owned by them. Their reports showed that they were not the owners of any rolling stock.

On — day of June, 1883, S. Brown Allen, auditor of public accounts for the State of Virginia, assessed the Baltimore and Ohio Railroad Company with taxes on its rolling stock used on said roads for the years from 1870 to 1881, inclusive, amounting in the aggregate, for eleven years, to the sum of $22,249.25, and on the — day of June, 1883, placed said taxes in the hands of J. Ed. Hamilton, treasurer of Augusta county, Va., for collection.

On the — day of June, 1883, said Hamilton, treasurer, distrained certain property, such as engines, passenger cars, box cars, stock cars, &c., belonging to the Baltimore and Ohio Railroad Company, and on the refusal of said company to pay the taxes so levied for advertised said property to be sold at public auction. To prevent this sale a restraining order was, on the petition of the Baltimore and Ohio Railroad Company, awarded on the — day of ——, 1883, by the judge of this circuit inhibiting the said Hamilton, treasurer, from making sale of said property. It is on a motion by the defendants, S. Brown Allen, auditor, and others, to dissolve this restraining order that the court is called upon to decide the question as
103 to the liability of the Baltimore and Ohio Railroad Company for the taxes levied on its rolling stock employed by it in its operation of the aforesaid railroads leased by it in the State of Virginia.

The first question presented is the character of the property on which the tax is assessed, Is it realty or personalty? 2, or does it fall within the definition of movable fixtures?

The doctrine that the engines, cars, &c., used in operating a railroad are movable fixtures is not sustained by the current of authorities.

It is in no sense real property or savoring of the realty; that it is personal property cannot be successfully controverted, and therefore, as the subject of taxation, it is governed by the same general rules applicable to other personal property. "The weight of authority is that it is personal estate to be taxed to the road where it has its domicile." Burroughs on Taxation, 186.

That it may, by the Legislature, be treated as real estate is admitted; that the Legislature of Virginia has not so treated it is conceded; that the Baltimore and Ohio Railroad Company is a foreign corporation is not disputed.

We think that a careful reading of the act of the Virginia Legislature, chap. 119, Session Acts, 1881–'2, shows that the tax to be imposed on the real and personal property of railroads is to be imposed on home railroads, those chartered under the laws of Virginia.

104 Section 20 of the act says: "Every railroad and canal company not exempted from taxation by virtue of its charter shall report annually," &c. The act means "by virtue of its charter" the provisions of a charter granted by the Legislature of Virginia. The Legislature of Virginia would have no right or power to make such a provision as to a foreign corporation. A charter granted a foreign corporation exempting it from taxation can only avail it within the dominion of the sovereign granting the charter. When it carries its property into the domains of another sovereign it becomes subject to the tax laws of the latter.

The same clause of the section (20) referred to requires the report to show particularly in what county or corporation such property is located.

In the 22d section of the same act providing for the taxation of express, transportation, steamship, sleeping car companies, &c., said companies are required to return the value of all real and personal property owned by said company and persons and located within said State (Virginia).

And this view that the statute does not contemplate the taxation of rolling stock not located in this State, but only temporarily within her borders, having its *situs* or location in another State, gathers

105 strength from the fact that this is the construction given the statute by the predecessors of Auditor Allen and of the board of public works of which he is a member. The act was passed by the Legislature during the session 1869–'70, and no assessment of the rolling stock of the complainant used in operating the railroads leased by it in Virginia has ever been made until that made by Auditor Allen on the — day of June, 1883. It has been said that if a statute "be susceptible of the interpretation which has been put upon it by long usage the courts will not disturb that construction." (1 H. & N., 856.)

The construction we have given the statute is in harmony with the current of decisions, for the authorities are numerous and clear that "a corporation is taxable for its personal property at its domicile, which is the State of its creation, and within that State, in the town where it has its principal office or place of business."

Burroughs on Taxation, 186.

Let us apply this principle to the facts presented in this cause.

The evidence shows that the complainant, The Baltimore and Ohio Railroad Company, was chartered by the State of Maryland; that its home or principal office is in the city of Baltimore, in that State, and that said city is the headquarters for all of its rolling stock used on its main and branch lines; that the trains are run solid from Lexington (formerly from Staunton), Virginia, to Baltimore; that none of its rolling stock is assigned permanently to service in the State of Virginia, nor to the four roads operated by it in that State; that its rolling stock is used interchangeably upon its main line and branches in the States of Maryland, Virginia, West Virginia, Pennsylvania, and States west of the Ohio river as the necessities of the service of the company may require.

106

In Orange and Alexandria Railroad Company *vs.* City Council of Alexandria, 17 Grattan, 186, where this question arose, Joynes, J., delivering the opinion of the court, said: "Upon this state of facts I am of opinion that the railroad company must be considered as having its residence or domicile in Alexandria, and that its rolling stock, though in daily use upon the road and absent from the city the greater part of the time, is to be considered as belonging there and is liable to taxation by the city."

The Phil., Wilmg. and Balt. R. R. Co. *vs.* Appeal Tax Court of Balt. City, 50 Maryland, 415, '16, was the case of a foreign corporation doing business in Maryland, with its principal office or place of business in Philadelphia, though owning extensive leasehold estates in the city of Baltimore, and part of its line being chartered under the laws of Maryland. The court said: "It is plain the rolling stock of the company cannot have permanent location or legal *situs* at two or more places at the same time, unless so declared by positive statute; and conceding that it should be located at the domicile or home or principal office of the corporation, it is clear, as the law now stands, there can be no well-founded claim to assess this property in Baltimore. The engines and cars of the appellant have no abiding place or permanent location in this State so as to become incorporated with the other permanent property of the State, and are only brought here transiently while employed in the operations of the road.

107

"And whether such engines and cars be regarded as personal property or as so far partaking of the nature of realty as to justify the denomination of them as movable fixtures the principle equally applies. They have the movable quality, and in the absence of positive legislation fixing a different *situs* they can have no other given them by construction than the home or principal office of the corporation."

108

See also Appeal Tax Court of Balt. City *vs.* The Northern Central Railway Company, 50 Maryland, 417.

The decisions of the Supreme Court of the United States in the cases of Hays *vs.* The Pacific Mail Steamship Co., 17 Howard, 596, and St. Louis *vs.* The Ferry Co., 11 Wallace, 425, rest upon facts very similar to those presented in the cause before us. A leading

case on this question, the power to tax the rolling stock of a railroad elsewhere than where it has its actual *situs*, is Pacific R. R. Co. *vs.* Cass Co. *et al.*, 53 Mo., 31, 32. The result of that decision is that the rolling stock of a railroad company which is in a county which is not the legal residence of the corporation, and which is only in transit or temporarily there, is not taxable in such county, but is to be assessed and taxed in the county which is the legal residence of such corporation.

109 The learned attorney general, counsel for the defendants, has strongly argued that to determine the *situs* or location of the rolling stock assessed with tax is in the city of Baltimore, and therefore not liable to such assessment, would be to allow foreign corporations to evade the tax laws of the State of Virginia and to escape the burthens borne by the railroad companies chartered by that State; the answer is, That is a question to be dealt with by the Legislature of Virginia.

The line of unquestioned decisions to which we have referred makes plain the duty of the court.

The opinion of the court is that the *situs* or location of the rolling stock employed by the Baltimore and Ohio Railroad Company in operating the said railroads leased by it in the State of Virginia is in Baltimore city, State of Maryland; the same is not liable to assessment for taxes under the tax laws of Virginia; that the motion to dissolve the injunction order heretofore awarded the complainant must be overruled and that said injunction order be perpetuated.

110 There are some questions of minor importance raised in the pleadings, but as they do not effect the merits of the controversy it is not necessary for the court to pass upon them.

A decree will be passed in accordance with this opinion.

(Signed) JOHN PAUL,
Dist. Judge.

I concur.

(Signed) HUGH L. BOND,
Cir. Judge.

111 And at another day, to wit, on the 30th day of August, 1884, the following final decree is entered of record in this cause, which is in the words and figures here following, to wit:

BALTIMORE & OHIO R. R. COMPANY
vs.
S. B. ALLEN, Auditor, & Others. } In Chancery.

Upon an injunction.

This cause, which, by consent of parties, by their counsel, was removed to this court from the United States circuit court for the western district of Virginia, at Danville, came on to be finally heard this 30th day of August, 1884, upon the bill and exhibits therewith filed, the demurrer and answers of the defendants, upon the agreement of counsel, filed in the cause, marked "Danville," upon the

agreement of parties, by counsel, marked "X," also signed by counsel, upon the exhibits filed with the defendant's answer, replications to said answers, and the agreement marked "B^3," signed by counsel, and the exhibits filed in the cause marked "B^1," "B^2," "B^3," "B^4," "B^5," and "B^6," and exhibit marked "W. M. C," and upon the injunction order of the Honorable Hugh L. Bond, judge, dated July 2nd, 1883, awarding a preliminary injunction, as prayed for in the bill, restraining John E. Hamilton, treasurer of Augusta county, from all further proceedings to levy upon, seize, or sell the property of the complainant company mentioned in the bill,

112 and upon the motion of the defendants, by their counsel, to dissolve said injunction, and the cause was argued by counsel; upon consideration whereof the court is of the opinion, for reasons stated in writing and filed with the record, that the rolling-stock of the complainant company is not liable to taxation under the laws of Virginia, and was not so liable at any time during the period mentioned in the bill, viz., from the year 1870 to the year 1881, inclusive, the court being of opinion that it is personal property of a company whose *situs* is to be determined by the place of the domicile of the company, which is the city of Baltimore, in the State of Maryland. It is therefore adjudged, ordered, and decreed that the demurrer be overruled, and that the motion to dissolve the injunction, awarded on the 2nd day of July, 1883, be and the same is overruled, and the said injunction is ordered and decreed to be made perpetual; and this cause is stricken from the docket, subject to any rights which either party may have under the paper marked "B^3" aforesaid.

113 I, A. K. Fletcher, clerk of the circuit court of the United States of America for the western district of Virginia, at Harrisonburg, do hereby certify that the foregoing is a true transcript of the record in the case of the Baltimore and Ohio Railroad Company against S. Brown Allen, auditor, and others, on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Harrisonburg, this 1st day of November, A. D. 1884.

[Seal of United States Circuit Court, Western District of Virginia.]

A. K. FLETCHER,
Clerk Circuit Court of the United States
for the Western District of Virginia.

114 Know all men by these presents that we, John P. Branch, Fred. R. Scott, and J. W. Scott, are held and firmly bound unto the Baltimore & Ohio Railroad Company in the full and just sum of five hundred dollars, to be paid to the said Baltimore & Ohio Railroad Company or their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of April, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a United States circuit court for the western district of Virginia, at Harrisonburg (Va.), in a suit depending in said court between The Baltimore & Ohio Railroad Company, as plaintiffs, and S. Brown Allan, (then) auditor of public accounts of Virginia, J. E. Hamilton, treasurer, & W. R. Smith, as defendants, there was rendered — against the said defendants; and the said defendants, through Morton Marye, now auditor of public accounts of Virginia, successor to said S. Brown Allan, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation, directed to the said Baltimore & Ohio Railroad Company, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said auditor of public accounts of Virginia, as appellant, shall prosecute said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN P. BRANCH. [SEAL.]
FRED. R. SCOTT. [SEAL.]
J. W. SCOTT. [SEAL.]

Sealed and delivered in presence of—
GEO. C. LAFFERTY.

Appeal allowed and bond approved by—
SAM. F. MILLER,
Associate Justice Supreme Court U. S.

8th April, 1885.

115 The United States of America to the Baltimore & Ohio Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western district of Virginia, wherein Morton Marye, successor to S. Brown Allen, auditor of public accounts of the State of Virginia, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this eighth day of April, in the year of our Lord one thousand eight hundred and eighty-five.

SAM. F. MILLER.

116 On this — day of ——, in the year of our Lord one thousand eight hundred and eighty- —, personally appeared —— —— before me, the subscriber, —— ——, and made oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the —, A. D. 188–.

—— ——.

I acknowledge due and legal service of the within citation, April 27, 1885.

HUGH W. SHEFFEY,
Counsel for the Baltimore & Ohio Railroad Company.

Endorsed on cover: Western Virginia C. C. U. S. No. 223. Morton Marye, successor to S. Brown Allen, auditor of public accounts of the State of Virginia, appellant, *vs.* The Baltimore and Ohio Railroad Company. Filed 30th April, 1885.

IN THE

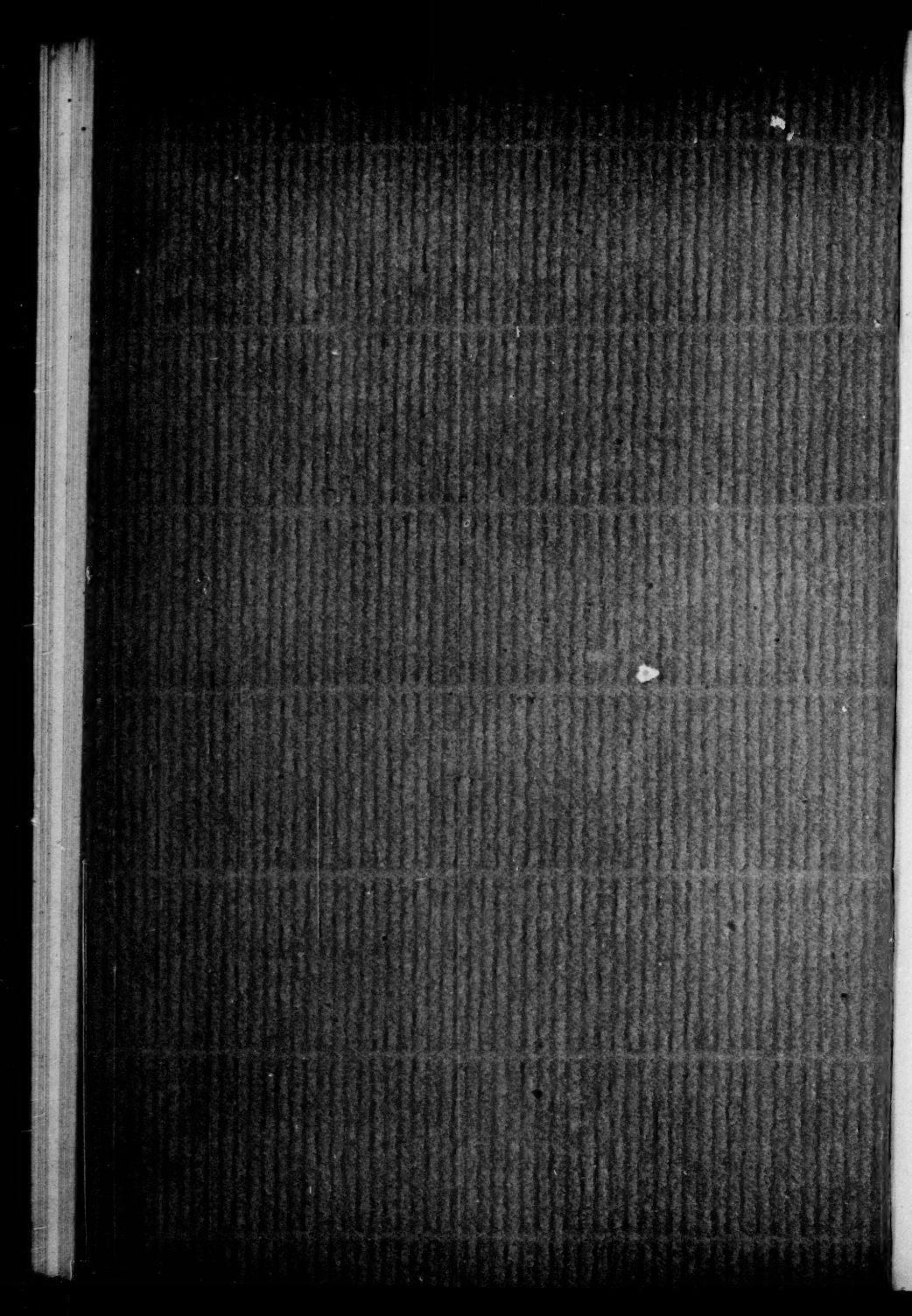
SUPREME COURT OF THE UNITED STATES.

MORTON MARYE, SUCCESSOR TO S. BROWN ALLEN, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF VIRGINIA, - *Appellant*,

vs.

THE BALTIMORE & OHIO RAILROAD COMPANY, - - - - - - *Appellee*.

BRIEF OF COUNSEL FOR APPELLANT.



IN THE

SUPREME COURT OF THE UNITED STATES.

MORTON MARYE, SUCCESSOR TO S. BROWN ALLEN, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF VIRGINIA, - *Appellant*,

vs.

THE BALTIMORE & OHIO RAILROAD COMPANY, - - - - - - *Appellee*.

BRIEF OF COUNSEL FOR APPELLANT.

Statement.

The Baltimore & Ohio Railroad Company, a corporation chartered under the laws of the State of Maryland, and having its domicile in the city of Baltimore, Maryland, was engaged in operating the lines of four railroads—Winchester and Potomac railroad, Winchester and Strausburg railroad, Strausburg and Harrisonburg railroad, Valley railroad—owned by Virginia corporations.

These corporations owned no rolling stock of their own, but they were operated solely with the rolling stock of the Baltimore & Ohio Railroad Company, under leases and other contracts.

The State of Virginia claimed the right to assess the rolling stock used in operating these lines for taxation under her revenue laws. The Baltimore & Ohio Railroad Company denied the right of the State to assess the rolling stock, and refused to pay taxes duly assessed thereon by the Board of Public Works.

The Auditor of Public Accounts caused the assessments to be placed

in the hands of the Treasurer of Augusta county for collection, together with damages and penalty prescribed by law. The Treasurer levied upon certain locomotives, cars, and other property belonging to the Baltimore & Ohio Railroad Company, and was proceeding to enforce payment of the tax bills by a sale of the property when the Company filed its bill in equity, and obtained an injunction from the Circuit Court of the United States for the Western District of Virginia. Upon the hearing it appeared that the Baltimore & Ohio Railroad Company operated these roads with rolling stock and motive power which was not used exclusively in Virginia, but was used interchangeably in Virginia, Maryland, and West Virginia, as the exigencies of transportation required, but that a certain number of engines and cars were at all times employed in the operation of the lines in Virginia, which were continuously operated without intermission. Upon these facts the Court held that as the domicile of the Company was in the city of Baltimore, in the State of Maryland, that the *situs* of the motive power and rolling stock was there, and the same was not liable to taxation in Virginia, and therefore entered a decree perpetuating the injunction.

From that decree an appeal was granted by one of the justices of this court, and the cause regularly docketed.

Argument.

The issue is a very narrow one, and will be presented to the Court in a few words.

The State of Virginia contends that the facts of this case do not fall within the principle, now well established by a continuous line of decisions, that no State has the power of imposing any burden upon inter-State commerce or the instruments by which it is carried on between any other State and the State imposing the burden. The State of Virginia did not attempt to impose a tax upon every car or locomotive run into the State during the year, but assessed for taxation the property in *constant* use in the State. There was no hardship in this; the Company enjoyed the constant protection of the laws of Virginia for its property, and it was but fair and just that it should bear its due pro-

portion of the expenses of the government which extended the protection. The Baltimore & Ohio Railroad Company does not run its cars from Baltimore under its Maryland charter, but comes to Virginia and leases lines from Virginia companies, obligates itself to furnish cars and run trains regularly, the right to do which it derives only from the franchises of the Virginia corporations.

The Virginia corporations hold their franchises upon the condition that they perform their duty to the public as common carriers by running trains and furnishing transportation for both freight and passengers.

All these obligations are assumed, agencies are established along the line, the necessary trains are put on and run regularly. The same cars and engines may not always be in the State, but a *certain number* of engines and cars are always in the State.

The Company, by coming to Virginia and leasing these lines of road, and incurring the obligation to operate them with engines and cars and run regular trains upon them, had voluntarily changed the *situs* of so much of its rolling stock as is in constant use upon the lines in Virginia, and it is therefore liable to taxation to that extent in Virginia.

The decree of the Circuit Court is erroneous, and should be reversed.

No authorities are cited, because the general principle that the instruments of inter-State commerce are exempt from taxation by any other State than the one in which they have their *situs* is well established, and the question involved here is not whether if the *situs* of the property is in Baltimore is it liable to taxation? but is, whether from the facts proved the *situs* of the property assessed for taxation is not in the State of Virginia.

The acts of the General Assembly under which the assessment was made and the collection of the tax bill was being enforced will be found in a note following.

R. A. AYERS,
Attorney-General of Virginia,
For MARYE,
Auditor.

RAILROAD AND CANAL COMPANIES.

See Acts 1874, page 353.

19. Every railroad and canal company not exempted from taxation by virtue of its charter, shall report annually on the first day of June, to the auditor of public accounts, all of its real and personal property of every description as of the first day of February of each year, showing particularly in what county or corporation such property is located, and classifying the same under the following heads:

First. Roadway and track, or canal bed.

Second. Depots, depot grounds and lots, station buildings and fixtures and machine shops.

Third. Real estate not included in other classes.

Fourth. Rolling stock, including passenger, freight, cattle, or stock; baggage, mail, express, sleeping palace, and all other cars owned by or belonging to the company; boats, machinery, and equipments; houses and appurtenances occupied by lock-gate keepers and other employees.

Fifth. Stores.

Sixth. Telegraph lines.

Seventh. Miscellaneous property.

Every such company shall also report, on or before the first day of June of each year, the gross and net receipts of the road or canal for the twelve months preceding the first day of February of each year, and in all cases the report shall be so made as to give the data on which the same is made. If such road or canal is only in part within the commonwealth, the report shall show what part is within the commonwealth and what proportion the same bears to the entire length of the road or canal, and shall apportion the receipts accordingly. The reports herein required shall be verified by the oath of the president or other proper officer. Upon the receipt of every such report it shall be the duty of the auditor of public accounts to lay the same before the board of public works, who shall, after thirty days' notice previously given to the president, treasurer, or other proper officer, proceed to ascertain and assess the value of the property so reported, upon the best and most reliable information that can be procured; and to this end shall be authorized and empowered to send for persons and papers should it be deemed necessary. A certified copy of the assessment, when made, shall be immediately forwarded by the secretary of the board to the president or other proper officer of every railroad or canal company so assessed, whose duty it shall be to pay into the treasury of the state, within sixty days after the receipt thereof, the tax which may be imposed thereon by law. A company failing to make such report, or to pay the tax assessed upon its property, shall be immediately assessed, under the direction of the auditor of public accounts, by any person appointed by him for the purpose, rating their real estate and rolling stock at twenty thousand dollars per mile;

and a tax shall at once be levied on such value at the annual rate levied upon the value of the other property for the year. Such tax so levied, as well as the sum required to be paid upon the report hereinbefore mentioned, if the same be not paid at the time provided herein, shall be collected by the treasurer of some county in which such company owns property, to whom the auditor may deliver the assessment, or a copy thereof. The treasurer may distrain and sell any personal property of such company, and shall pay the taxes into the treasury within three months from the time of the assessment, or a copy as aforesaid may be delivered to him. The compensation of such treasurer to be the same as he receives for collecting other taxes in his county or corporation.

29-117

IN THE

Supreme Court of the United States

MORTON MARYE, SUCCESSOR TO S. BROWN ALLEN, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF VIRGINIA, - *Appellant.*

vs.

THE BALTIMORE & OHIO RAILROAD COMPANY, - - - - - *Appellee.*

BRIEF OF COUNSEL FOR APPELLEE.

No. 223.

MORTON MARYE,
Successor to S. BROWN ALLEN, Auditor of Public Accounts of the State of Virginia,
APPELLANT.

vs.

THE BALTIMORE & OHIO RAILROAD COMPANY,
APPELLEE.

IN THE

Supreme Court

OF THE

United States.

BRIEF FOR APPELLEE.

STATEMENT.

The Baltimore and Ohio Railroad Company, a corporation under the laws or Maryland, 1826, chapter 123, has for a number of years leased and operated certain railroads in Virginia, owned by Virginia corporations, viz: the Winchester and Potomac Railroad, the Winchester and Strasburg Railroad, and the Strasburg and Harrisonburg Railroad. The Valley Railroad Company, which owns the Valley Railroad from Har-

risonburg to Lexington, Va., from April, 1874, to May, 1876, leased its road to the B. & O. R. R. Co. Thereafter it did for a time lease to the Shenandoah Valley R. R. Co., but had operated its own road for some years prior to 1883, using therefor rolling stock obtained from the B. & O. R. R. Co., and other Railroad Companies, at the usual mileage rates. These railroads together form a continuous line from Lexington, in Virginia, to Harper's Ferry, in West Virginia. None of the Virginia corporations owns any rolling stock, but the Baltimore and Ohio Company employs its own engines and cars in operating the railroads leased by it, while the Valley Railroad Company obtains equipment as above.

The way in which the B. & O. engines and cars are employed between Lexington and Harper's Ferry is clearly set forth in the affidavit of Wm. M. Clements, Master of Transportation, at pages 33 and 34 of the Record, which is evidence under the agreement, page 28 of Record. His statement is in part as follows: "The rolling stock, consisting of engines and cars used in running over the four Valley lines, so-called, * * * is the property of the Baltimore and Ohio Railroad Company, but this rolling stock is used interchangeably upon all the lines of the Baltimore and Ohio Railroad and its branches. There is no such rolling stock assigned permanently to the four lines above named or either of them in the State of Virginia. The trains in which the rolling stock is used on the four lines above named now start from Lexington, Virginia, and pass through the State of Virginia, over the four lines of railroad above named, into the State of West Virginia, and thence into the State of Maryland to the city of

Baltimore, or if any of the cars are destined to western points, thence from Harper's Ferry to the West, but the trains in which the cars are hauled are run solid from Lexington, Virginia, (and formerly before the road was completed to Lexington from Staunton, Virginia,) to Baltimore.

None of the rolling stock is assigned permanently to service in the State of Virginia, nor is any of the rolling stock set apart to the four lines in that State, or to the four Valley lines at all; but such rolling stock is used interchangeably upon the main line and branches of the Baltimore and Ohio Railroad in the States of Maryland and Virginia, and indeed, also, upon the divisions of the Baltimore and Ohio Railroad in Pennsylvania and in States west of the Ohio river, just as the necessities of the service of the company require. Sometimes this rolling stock will be found on the main line, sometimes on the Pittsburgh Division, sometimes on the Trans-Ohio Divisions, and there is none of it that is permanently set apart for use upon the four Valley lines in Virginia above described."

The engines and cars so employed, the appellant claims, were and are subject to taxation, under the acts of the Virginia Legislature, mentioned on page 4 of the Record, which provide the mode of assessing railroads and canals for purposes of taxation, and designate the property to be taxed as follows: "*Every railroad and canal company not exempted from taxation by virtue of its charter* shall report annually on the first day of June to the auditor of public accounts all of its real and personal property of every descrip-

tion as of the first day of February of each year, showing particularly in what county or corporation such property is located, and classifying the same under the following heads:

First. Roadway and track or canal bed.

Second. Depot, depot grounds and lots, station buildings and fixtures, and machine shops.

Third. Real estate not included in other classes.

Fourth. Rolling stock, including passenger, freight, cattle or stock, baggage, mail, express, sleeping, palace, *and all other cars owned by or belonging to the company;* boats, machinery and equipments, houses and appurtenances occupied by lock-gate keepers and other employes.

Fifth. Stores.

Sixth. Telegraph Lines.

Seventh. Miscellaneous property.

It was to prevent the sale of its property under an assessment and levy made by the appellant's predecessor alleged to be in pursuance of the above act that the appellee brought its suit in the Circuit Court and obtained a perpetual injunction.

ARGUMENT.

The decision of the Circuit Court rests on two grounds: (1.) That the acts of Virginia, under which the defendant had made an assessment and claimed the right to levy on the property, applied only to cor-

porations chartered by the State of Virginia; and (2.) That the *situs* for the purposes of taxation of the appellee's engines and cars was in Maryland, the appellee's domicil.

On the first ground, we need only refer to the opinion of the Court filed in this case, on page 44 of the Record. That the Virginia Legislature never intended that the acts under which it is sought to assess the appellee's rolling stock, should apply to the personal property of a corporation chartered by another State, seems perfectly clear not only from the description of the corporations required to report as companies "not exempt from taxation by virtue of their charters," and from the requirement that the report must state in what county the property is located, but also from the requirement that the company report: "Fourth, Rolling stock, including passenger, freight, and all other cars owned by or belonging to the company." There is no separation of rolling stock used within the State, but all rolling stock belonging to the company must be returned and assessed. Such a provision can be valid only as to corporations domiciled in the State, all whose personal property is taxable therein, by reason merely of the domicil of the owner.

Moreover, the Virginia law requires the Board of Public Works "to ascertain and assess the value of the property so reported, upon the best and most reliable information that can be procured." Now the undisputed evidence in this case is that no part of the rolling stock assessed is used exclusively or even continuously within the State of Virginia, but that it is all

used in traffic through Virginia, West Virginia and Maryland, and often through other States. Therefore, if the law in question is held to cover such a case as the present, we shall have the State of Virginia taxing at their full value engines and cars that merely pass through her territory. If she may do so, West Virginia, Maryland, Pennsylvania and every other State through which the traffic passes may do the same.

It is submitted that no act will be extended by construction so as to effect such a result. We are not now discussing the right of a State to tax under a proper law the rolling stock of a railroad which has acquired a *situs* for taxation within that State.

For the purposes of the present discussion such power may be conceded. But we submit that the present Virginia legislation is not adapted or intended to execute such a power. It enacts no rule as to the *situs* of such property, and provides no method of ascertaining it.

(2) *What is the* SITUS *of the property?*

The authorities are clear that in the absence of legislation to the contrary, the *situs* for taxation of the personal property of a corporation is at its domicil, which is the State of its creation, and within that State, in the town where it has its principal office or place of business. Burroughs on Taxation, 186; Orange & Alex. R. R. Co. *v.* Alexandria, 17 Grattan, 186; Phila. Wil. & Balto. R. R. Co. *v.* Appeal Tax Court, 50 Md. 415; Appeal Tax Court *v.* Pullman P. C. Co., 50 Md., 452;

Appeal Tax Court *v.* Northern Central Rwy. Co., 50 Md., 417; St. Louis *v.* The Ferry Co., 11 Wall; 425; Hays *v.* The Pacific Mail Steamship Co., 17 How., 596; Pacific R. R. Co. *v.* Cass County et al., 53 Mo., 31, 32.

JOHN K. COWEN,

HUGH W. SHEFFEY,

HUGH L. BOND, JR.,

Counsel for Appellee.